[JOINT COMMITTEE PRINT]

ISSUES PRESENTED BY PROPOSALS TO MODIFY THE TAX TREATMENT OF EXPATRIATION

A REPORT BY THE STAFF

OF THE

JOINT COMMITTEE ON TAXATION

PURSUANT TO

PUBLIC LAW 104–7

JUNE 1, 1995

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LETTER OF TRANSMITTAL

JUNE 1, 1995.

The Honorable Bill Archer, *Chairman,*
Committee on Ways and Means,
U.S. House of Representatives,
Washington, DC.

The Honorable Bob Packwood, *Chairman,*
Committee on Finance,
U.S. Senate,
Washington, DC.

DEAR CHAIRMAN ARCHER AND CHAIRMAN PACKWOOD: With this letter, I am transmitting the study by the staff of the Joint Committee on Taxation ("Joint Committee staff") of the tax treatment of expatriation as required by section 6 of H.R. 831 (P.L. 104–7). An Executive Summary of the study's findings and conclusions precedes the text of the study. I will be providing to you separately certain information obtained by the Joint Committee staff during the course of its study, which is tax return information subject to the disclosure requirements of section 6103 of the Internal Revenue Code and, therefore, which cannot be contained in the portion of the study made available to the public.

Part I of the study is an overview and background of present law and the recent legislative proposals to modify the tax treatment of expatriation. Part II is a description of present-law Federal income, estate and gift taxation of U.S. citizens, residents, and nonresidents, as well as the requirements for U.S. citizenship, immigration, and visas. Part III describes certain proposals to modify the tax treatment of expatriation: the Administration proposal included in the President's fiscal year 1996 budget proposal (introduced as part of H.R. 981 and S. 453); the Senate amendment to H.R. 831; the proposal contained in the motion to recommit H.R. 1215, offered by Representative Gephardt; and the identical bills introduced by Senator Moynihan (S. 700) and Representative Gibbons (H.R. 1535).

Part IV of the study discusses general issues raised by the proposals to modify the tax treatment of expatriation and Part V discusses the specific study issues listed in section 6 of Public Law 104–7. Part VI discusses possible alternatives to the existing expatriation tax proposals. Appendices provide the following information related to the study: (A) comparison of saving clause provisions in bilateral U.S. tax treaties; (B) summary of other countries' taxation of expatriation and immigration; (C) summary of foreign taxation of estates, inheritances, and gifts; (D) Administration proposal as submitted to the Congress on February 6, 1995; (E) discussion of issues relating to estimating the revenue effects of proposed legislation to impose tax on expatriation and current Joint Committee staff revenue estimates of the expatriation proposals; (F) study methodology; (G) exchanges of correspondence between the Joint Committee staff and the Departments of State and Treasury, the Internal Revenue Service, and the Immigration and Naturalization Service; and (H) certain State Department information on expatriation for 1994 and 1995.

Over the course of the approximately 2-month period that the Joint Committee staff prepared this study, the staff reviewed testimony, met extensively with the Administration, legal authorities, and private practitioners, and consulted at length with individuals and organizations with an interest in the various proposals to modify the tax treatment of expatriation. The Joint Committee staff corresponded with practitioners in other countries that impose tax on former citizens and residents. The Joint Committee staff met with economists regarding the potential trade and flow of capital implications of imposing tax on expatriation. Finally, the Joint Committee staff did extensive research into the present-law expatriation provisions, applicable immigration law, the Privacy Act, and the legal issues involved in the various proposals to impose tax on expatriation.

A copy of the draft study was provided to the Treasury Department for review and comment.

The Joint Committee staff wishes to thank all those who assisted in providing data and other information for the study, including the State Department, the Treasury Department, the Internal Revenue Service, the Immigration and Naturalization Service, the Law Library of the Library of Congress, and the private tax practitioners and economists with experience in expatriation and immigration issues.

Sincerely,

KENNETH J. KIES,
Chief of Staff.

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EXECUTIVE SUMMARY

Legislative background

Public Law 104-7 (section 6), signed by President Clinton on April 11, 1995, directed the staff of the Joint Committee on Taxation ("Joint Committee staff") to conduct a study of the issues presented by certain proposals to modify the taxation of expatriation (i.e., relinquishing one's U.S. citizenship or U.S. residence). The Administration submitted a proposal as part of the President's Fiscal Year 1996 budget on February 6, 1995 (included in H.R. 981 and S. 453, introduced by request on behalf of the Administration on February 16, 1995). The Congress considered a modified version of the Administration proposal, which passed the Senate as an amendment to H.R. 831. H.R. 831 as enacted (P.L. 104-7) did not include the Senate amendment, but included a provision directing the Joint Committee staff to study the issue and report by June 1, 1995. Senator Moynihan and Representative Gibbons subsequently introduced identical bills (S. 700 and H.R. 1535), which would further modify the Administration proposal.

Joint Committee staff findings

In the course of analyzing the Administration and other proposals relating to the tax treatment of U.S. citizens who relinquish their citizenship and long-term U.S. residents who give up their residence, the Joint Committee staff reached the following findings and conclusions:

- Since 1980, an average of 781 U.S. citizens expatriated each year. Since 1962, the average number of U.S. citizens expatriating each year has been 1,146. In 1994, 858 U.S. citizens expatriated. Although there is some anecdotal evidence that a small number of U.S. citizens may be expatriating to avoid continuing to pay U.S. tax and the amount of potential tax liability involved in any individual case could be significant, the Joint Committee staff found no evidence that the problem is either widespread or growing. However, certain practitioners have indicated that they believe that present law is not a significant impediment to expatriation even if minimizing U.S. taxes is a principal purpose. Certain changes could be made to present law to strengthen its impact on those expatriating for tax avoidance purposes without also negatively impacting those Americans who expatriate for nontax reasons.
- Present-law Internal Revenue Code section 877 imposes U.S. income tax on the U.S. assets of U.S. citizens who expatriate for tax avoidance purposes. The Joint Committee staff has identified certain problems with the present-law provisions, including the following:

- There are legal methods to avoid some or all taxation under section 877 through proper tax planning.
- Section 877 is ineffective with respect to individuals who relocate to certain countries with which the United States has a tax treaty because these treaties may not permit the United States to impose a tax on its former citizens who are residents in such other countries.
- Section 877 only applies to U.S.-source assets and careful tax planning can be used to relocate assets outside the United States and, therefore, outside the scope of section 877.
- The Administration believes that section 877 is unadministrable because it is difficult to demonstrate that tax avoidance is a principal reason for expatriation. However, it appears that neither the current Administration nor past administrations have ever undertaken any systematic effort to enforce the provisions of section 877. No regulations have been issued under section 877 since its enactment in 1966. The Internal Revenue Service has litigated the tax avoidance motive issue under section 877 in only two cases and has won one of those cases.
- The Administration proposal would eliminate the intent test currently applicable under section 877 and would apply an objective test that would impose tax on U.S. citizens who expatriate as if the expatriating individual had sold all of his or her assets.
- The Administration proposal to impose a new tax regime of much broader scope than present-law section 877 raises a number of issues, including the following:
- The Administration proposal affects more individuals than intended. The Administration proposal has been justified on two grounds. First, the Administration has stated that it is appropriate to collect U.S. tax with respect to those individuals who have enjoyed the benefits of U.S. citizenship (e.g., traveling on a U.S. passport) or with respect to U.S. citizens and long-term residents whose assets have enjoyed the protection of being within U.S. borders. Second, the Administration and others have pointed out that certain U.S. citizens are relinquishing their citizenship, but are maintaining a significant continuing relationship with the United States. However, the Administration proposal would affect U.S. citizens who have lived abroad their entire lives and have very tenuous ties to the United States. It also would affect expatriates who sever all ties with the United States.
- The Administration proposal would require all U.S. citizens with assets to pay a tax on unrealized gains on their assets upon expatriation. Gains would be taxed to the extent they are in excess of $600,000 ($1.2 million in the case of married individuals filing a joint return, both of whom expatriate). This tax on unrealized gains is inconsistent with the normative U.S. income tax system of imposing tax only on recognized gains. Although the Administration has stated that the tax would be

imposed generally in the case of U.S. citizens with assets in excess of $5 million, the key determinant of whether the tax is imposed is the amount of unrealized gains; thus, taxpayers with low-basis assets would pay the tax even if their total assets are well below $5 million.

- The Administration proposal would impose tax on all expatriates and long-term residents who relinquish their U.S. residence without regard to a taxpayer's motivation. Thus, the Administration proposal would impose tax on U.S. citizens or residents who (1) are expatriating for purely nontax reasons, (2) have long-term dual citizenship with another country and who are returning to their country of ancestry or birth, or (3) have tenuous ties to the United States (e.g., an individual who did not realize that he or she was a U.S. citizen).
- The Administration proposal would apply to long-term U.S. residents who relinquish their U.S. residence. It will be difficult to determine when U.S. residence is relinquished because there are no specific acts that must be taken to give up U.S. residence (or permanent residence (i.e., green card) status).
- A number of practical problems are raised by the Administration proposal to tax unrealized gains (i.e., mark to market) interests in property upon expatriation. These issues may be summarized as (1) identifying the owner of the interest in property (identity problems), (2) raising sufficient funds from the interests in property to pay the tax (liquidity problems), and (3) valuing the interests in property (valuation problems). The problems are often related—something that makes it difficult to determine who owns an interest in property often makes that interest very illiquid, which, in turn, may make valuing the interest more difficult. These problems are especially difficult in the case of interests held through trusts because expatriating beneficiaries would be subject to a tax liability determined by reference to the unrealized appreciation in value of the trust's assets notwithstanding the fact that the beneficiary has no access to the trust assets. This particular aspect of the proposal raises potential constitutional issues at least under certain circumstances. Moreover, under certain circumstances, the tax might inappropriately interfere with the right to expatriate recognized by U.S. and international law.
- The Administration proposal may retroactively impose tax on former U.S. citizens who lost their citizenship years ago. U.S. citizenship is lost by performing certain acts of expatriation (for example, by formally renouncing U.S. citizenship or by being naturalized in a foreign country). These acts of expatriation may have occurred many years prior to announcement of the Administration proposal, but the individual might have never gone through the process of recording that loss with the U.S. government through acquisition of a certificate of loss of nationality from the Department of State of the United States ("State Department"). If such an individual were to apply for a certificate of loss of nationality on or after February 6, 1995, the Administration proposal would subject such an individual

to the proposed expatriation tax. In addition, all former citizens who have not been issued a CLN as of February 6, 1995 would be retroactively liable for taxation as a U.S. citizen for the period since the expatriating act was committed. It is unclear whether the United States would have any legal basis for attempting to collect tax in such a case since the individual has lost all rights and responsibilities of U.S. citizenship years before. Moreover, the retroactivity feature of the proposal raises serious Constitutional concerns and issues of basic fairness.

- The Administration proposal would have an unfair effect on U.S. long-term residents who have been in the United States for more than 10 years and who have had no notice that they would be taxed on unrealized gains upon departure from the United States.
- The Administration proposal may subject to tax assets that have no relationship with the United States. For example, the proposal would subject to tax assets acquired by long-term residents of the United States that were acquired outside the United States and were never brought into the United States.
- Enactment of the Administration proposal may create an incentive to expatriate which does not exist under current law for individuals who either have recently inherited wealth or who expect to inherit wealth in the near future, because the basis of inherited assets is stepped up to the fair market value of the assets on the date of the decedent's death, and thus there would be little or no expatriation tax imposed on such assets. A similar incentive would exist for those who have recently disposed of appreciated assets (e.g., a long-held family business). At the same time, the long-term tax savings from eliminating exposure to the U.S. tax system could be extraordinary. This problem may be particularly significant because certain anecdotal evidence suggests that much of the limited class of wealthy U.S. citizens who may have expatriated for tax avoidance purposes involves second and third generation wealth.
- The Administration proposal would result in double taxation to a former U.S. citizen or resident who becomes a resident of a country that imposes tax on the gain derived from a sale of assets under a tax regime similar to the U.S. system, or if the country in which the asset is located taxes such gain. In some situations, relief from double taxation may be available under a tax treaty or provisions in the other country's internal law.
- The Senate amendment to H.R. 831 and the bills introduced by Senator Moynihan (S. 700) and Representative Gibbons (H.R. 1535) address some, but not all, of the issues raised by the Administration proposal.
- If the Congress determines that present-law section 877 should be modified, there are alternatives to the Administration proposal that may be more appropriate. In evaluating such alternatives, the following issues should be considered:

- What is the underlying rationale for the proposal? In other words, is the proposal intended to collect U.S. taxes that would otherwise be paid by individuals who do not really sever their ties with the United States? If so, is it intended to collect the equivalent amount of income taxes, estate taxes, or both? Or, is the proposal intended to impose a tax to recoup the benefits of U.S. citizenship or residence?
- What is the appropriate class of individuals to whom the proposal should be applied given the rationale for the proposal?
- How can the proposal be structured so as not to impose a new tax regime retroactively on individuals who structured their holdings of assets in reliance upon present law?
- Does the proposal impose a tax that is fair in relation to its goals? Is the tax imposed consistent with the U.S. normative system of taxation or is it an extraordinary tax? If it is an extraordinary tax, are there alternatives that would be more consistent with the way in which the United States taxes it citizens and residents?
- Can a modification to present law be structured so as to not create an incentive to expatriate for those with recently inherited wealth?

Related finding—tax return filing by U.S. citizens residing abroad

In the course of studying the issue of the appropriate tax treatment of U.S. citizens and long-term residents who relinquish citizenship or residence, the Joint Committee staff also obtained information from the Internal Revenue Service on the tax return filings of U.S. citizens who reside outside the United States. There are currently 2.5 million U.S. citizens (not including U.S. government employees and U.S. military personnel and their families) who reside outside the United States. Only approximately 1 million taxpayers annually file Form 1040 (U.S. Individual Income Tax Return) and included in this 1 million figure are U.S. government and military personnel residing abroad. Although many of these taxpayers may be entitled to foreign tax credits that would otherwise reduce the amount of U.S. income taxes owed, it appears that the failure of U.S. citizens residing outside the United States to file annual income tax returns may represent a continuing compliance problem that should be explored further.

I. OVERVIEW AND BACKGROUND

A. Requirements of Public Law 104-7

Section 6 of the conference agreement on H.R. 831, as approved by the House of Representatives on March 30, 1995, and the Senate on April 3, 1995, and as signed by the President on April 11, 1995 (P.L. 104-7), requires the staff of the Joint Committee on Taxation ("Joint Committee staff") to conduct a study of the issues presented by any proposals to affect the taxation of expatriation (i.e., relinquishing one's U.S. citizenship or residence). The Chief of Staff of the Joint Committee on Taxation is required to report the study results to the Chairmen of the House Committee on Ways and Means and the Senate Committee on Finance by no later than June 1, 1995.

Among the issues that the Joint Committee staff was required to analyze as part of the study include the following:

(1) the effectiveness and enforceability of current law with respect to the tax treatment of expatriation;
(2) the current level of expatriation for tax avoidance purposes;
(3) any restrictions imposed by any constitutional requirement that the Federal income tax apply only to realized gains;
(4) the application of international human rights principles to taxation of expatriation;
(5) the possible effects of any such proposals on the free flow of capital into the United States;
(6) the impact of any such proposals on existing tax treaties and future treaty negotiations;
(7) the operation of any such proposals in the case of interests in trusts;
(8) the problems of potential double taxation in any such proposals;
(9) the impact of any such proposals on the trade policy objectives of the United States;
(10) the administrability of such proposals; and
(11) possible problems associated with existing law, including estate and gift tax provisions.

In addition to these issues, the Joint Committee staff evaluated a number of other issues that have been raised, including the following:

(1) the extent to which any of the proposals impose tax retroactively on U.S. citizens or long-term residents who relinquish their citizenship or residence;
(2) the classes of individuals who may be affected by any of the proposals and the extent to which present law does not adequately address the issues raised with respect to any of these classes of individuals; and
(3) the potential problems of liquidity and valuation raised by the Administration proposal.

B. Background Information

General background information

Since 1980, an average of 781 U.S. citizens have expatriated each year. The average annual level of expatriation for the years 1962-1994 is 1146. In 1994, 858 U.S. citizens expatriated.

Table 1 contains information received from the State Department relating to naturalizations and renunciations from 1962-1994.

Table 1.—Americans Giving Up U.S. Citizenship, 1962–1994

Year	Abandonments/ Renunciations [1]
1994	858
1993	697
1992	557
1991	619
1990	571
1989	724
1988	489
1987	612
1986	751
1985	766
1984	788
1983	771
1982	952
1981	1,446
1980	1,119
1979	946
1978	1,753
1977	1,504
1976	1,880
1975	1,512
1974	1,556
1973	1,177
1972	1,510
1971	1,422
1970	2,061
1969	1,004
1968	1,707
1967	933
1966	1,531
1965	1,411
1964	1,466
1963	1,491
1962	1,234

[1] Data supplied by the State Department of 1962–1979 is not entirely consistent with data supplied for 1980–1994; however, the differences are minor.

Source: Department of State.

As Table 1 indicates, there are no clear patterns to the levels of expatriation during the period covered by the table. Although the 1994 expatriations were higher than in any year since 1982, it appears that the levels of expatriation were significantly higher during the 1970's than in the period since 1982. It is possible that the levels of expatriation during the 1970's in part reflect the consequences of U.S. involvement in the war in Vietnam.

Appendix H contains certain information relating to U.S. citizens who expatriated in 1994 and early 1995. The reported numbers of U.S. citizens renouncing their citizenship includes naturalized U.S. citizens who return to their countries of birth. For example, according to the State Department, of the 858 U.S. citizens who relinquished their citizenship in 1994, a significant percentage were Korean Americans returning to their country of birth or ancestry. Under Korean law, an individual is not permitted to hold dual citizenship, which requires Korean Americans to give up their U.S. citizenship in order to return to Korea. According to a recent story in the *Washington Post*, Korean Americans have experienced difficult economic and cultural problems when they come to the United States.[1] The *Washington Post* indicated that between 4 and 5 percent of New York City's Korean population (or about a thousand families) are returning to Korea each year.

In 1984, according to State Department records, there were approximately 1.8 million private U.S. citizens living outside the United States.[2] In 1993, there were approximately 2.5 million private U.S. citizens residing abroad. The Internal Revenue Service annually receives approximately 1 million Form 1040s filed by citizens residing outside the United States (see Internal Revenue Service letter dated May 12, 1995, Exhibit B). Included in these 1 million returns are tax returns filed by U.S. military and nonmilitary U.S. government employees stationed abroad.

Thus, it appears that fewer than 40 percent of U.S. citizens residing abroad (including U.S. government employees) file annual income tax returns.[3]

Present law

In general

A U.S. citizen or resident generally is subject to the U.S. individual income tax on his or her worldwide taxable income. All income

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[1] "Their American Nightmare; Why Korean Entrepreneurs Are Fleeing Our Cities," *Washington Post*, May 7, 1995, p. C-1.

[2] The information was compiled from U.S. Foreign Service Post information. The number of U.S. citizens living abroad does not include U.S. government (military and nonmilitary) employees or their dependents.

[3] In 1985, the General Accounting Office ("GAO") testified before the Congress suggesting that the failure of U.S. citizens living abroad to file annual income tax returns was a significant problem. *Statement of Johnny C. Finch, Senior Associate Director, General Government Division, Before the Subcommittee on Commerce, Consumer and Monetary Affairs, Committee on Government Operations, House of Representatives, on United States Citizens Living in Foreign Countries and Not Filing Federal Income Tax Returns*, United States General Accounting Office, May 8, 1985. In its testimony, the GAO found that only 39 percent of U.S. citizens living abroad were filing annual income tax returns. In response to this testimony, the Congress enacted a provision in the Tax Reform Act of 1986 that requires the filing of an IRS information returnwith a U.S. citizen's passport application and with a resident alien's green card application. It appears that the information return requirement may not have significantly improved the tax return filings of U.S. citizens residing outside the United States. In fact, the GAO issued a follow-up report in 1993, and did not find significant improvements in the compliance with tax return filing requirements of U.S. citizens living outside the United States. *Tax Administration, IRS Activities to Increase Compliance of Overseas Taxpayers*, United States General Accounting Office, GAO/GGD 93-93, May 18, 1993. In its May 23, 1995, response to the Joint Committee on Taxation, the Internal Revenue Service stated that it has undertaken efforts to improve the return filing by U.S. citizens residing outside the United States and that its initiatives have resulted in improved voluntary compliance (see Appendix G).

earned by a U.S. citizen, whether from sources inside or outside the United States, is taxable whether or not the individual lives within the United States.

If a U.S. citizen or resident earns income from sources outside the United States, and that income is subject to foreign income taxes, the individual generally is permitted a foreign tax credit against his or her U.S. income tax liability to the extent of foreign income taxes paid on that income. In addition, a U.S. citizen who lives and works in a foreign country generally is permitted to exclude up to $70,000 of annual compensation from being subject to U.S. income taxes.

Nonresident aliens are subject to U.S. taxation only to the extent their income is from U.S. sources or is effectively connected with the conduct of a trade or business within the United States. U.S. source income generally includes items such as interest and dividends paid by U.S. companies, but does not include gains on the sale of stock or securities issued by U.S. companies.

Special rules

Relinquishing U.S. citizenship with a principal purpose of avoiding tax.—An individual who relinquishes his or her U.S. citizenship with a principal purpose of avoiding U.S. taxes is subject to an alternative method of income taxation for 10 years after expatriation under section 877 of the Code. Under this provision, if the Treasury Secretary establishes that it is reasonable to believe that the expatriate's loss of U.S. citizenship would, but for the application of this provision, result in a substantial reduction in U.S. tax based on the expatriate's probable income for the taxable year, then the expatriate has the burden of proving that the loss of citizenship did not have as one of its principal purposes the avoidance of U.S. income, estate or gift taxes. Section 877 does *not* apply to resident aliens who terminate their U.S. residency.

The alternative method of taxation under section 877 modifies the rules generally applicable to the taxation of nonresident aliens in two ways. First, the expatriate is subject to tax on his or her U.S. source income at the rates applicable to U.S. citizens rather than the rates applicable to other nonresident aliens. (Unlike U.S. citizens, however, individuals subject to section 877 are not taxed on any foreign source income.) Second, the scope of items treated as U.S. source income for section 877 purposes is broader than those items generally considered to be U.S. source income under the Code.

Aliens having a break in residency status.—A special rule applies in the case of an individual who has been treated as a resident of the United States for at least three consecutive years, if the individual becomes a nonresident but regains residency status within a three-year period. In such cases, the individual is subject to U.S. tax for all intermediate years under the section 877 rules described above (i.e., the individual is taxed in the same manner as a U.S. citizen who renounced U.S. citizenship with a principal purpose of avoiding U.S. taxes). The special rule for a break in residency status applies regardless of the subjective intent of the individual.

Aliens who physically leave the United States.—Any alien, resident or nonresident, who physically leaves the United States or any possession thereof is required to obtain a certificate from the IRS District Director that he or she has complied with all U.S. income tax obligations. This certificate often is referred to as a "sailing permit". The certificate may not be issued unless all income tax due up until the time of departure has been paid, or an adequate bond or other security has been posted, or the Treasury Secretary finds that the collection of the tax will not be jeopardized by the departure of the alien.

Transfers to foreign corporations.—Certain transfers of property by shareholders to a controlled corporation are generally tax-free if the persons transferring the property own at least 80 percent of the corporation after the transfer. Also, in certain corporate reorganizations, including qualifying acquisitions, and dispositions, shareholders of one corporation may exchange their stock or securities for stock or securities of another corporation that is a party to the reorganization without a taxable event except to the extent they receive cash or other property that is not permitted stock or securities.

Section 367 applies special rules, however, if property is transferred by a U.S. person to a foreign corporation in a transaction that would otherwise be tax-free under these provisions. These special rules are generally directed at situations where property is transferred to a foreign corporation, outside of the U.S. taxing jurisdiction, so that a subsequent sale by that corporation could escape U.S. tax notwithstanding the carryover basis of the asset. In some instances, such a transfer causes an immediate taxable event so that the generally applicable tax-free rules are overridden. In other instances, the taxpayer may escape immediate tax by entering into a gain recognition agreement obligating the taxpayer to pay tax if the property is disposed of within a specified time period after the transfer.

Section 367 also imposes rules directed principally at situations where a U.S. person has an interest in a foreign corporation, such as a controlled foreign corporation ("CFC") meeting specific U.S. shareholder ownership requirements, that could result in the U.S. person being taxed on its share of certain foreign corporate earnings. These rules are designed to prevent the avoidance of tax in circumstances where a reorganization or other nonrecognition transaction restructures the stock or asset ownership of the foreign corporation so that the technical requirements for imposition of U.S. tax under the CFC or other rules are no longer met, thus potentially removing the earnings of the original CFC from current or future U.S. tax or changing the character of the earnings for U.S. tax purposes (e.g., from dividend to capital gain).

The rules of section 367 do not generally apply unless there is a transfer by a U.S. person to a foreign corporation, or unless a foreign corporation of which a U.S. person is a shareholder engages in certain transactions. Because an individual who expatriates is no longer a U.S. person, section 367 has no effect on actions taken by such individuals after expatriation. The Treasury Department has considerable regulatory authority under section 367 to address situations that may result in U.S. tax avoidance. The legislative history suggests that a principal concern was avoidance of U.S. tax on foreign earnings and profits and it does not appear that the Treasury has either considered application of the current provision to expatriation situations or sought any expansion of regulatory authority. Under the existing regulations and the relevant expatriation sections of the Code, a U.S. person who expatriates, even for a principal purpose of avoiding U.S. tax, may subsequently engage in transactions that involve the transfer of property to a foreign corporation without any adverse consequences under section 367. Similarly, a U.S. person who has expatriated is not considered to be a U.S. person for purposes of applying the rules that address restructurings of foreign corporations with U.S. shareholders. In addition, there may be difficulties enforcing a gain recognition agreement if a U.S. person who has been affected by a transfer under section 367 and has entered such an agreement later expatriates .

Similar issues exist under section 1491 of the Code. Section 1491 imposes a 35-percent tax on otherwise untaxed appreciation when appreciated property is transferred by a U.S. citizen or resident, or by a domestic corporation, partnership, estate or trust, to certain foreign entities in a transaction not covered by section 367. As in the case of section 367, an individual who has expatriated is no longer a U.S. citizen and may also no longer be a U.S. resident and, thus, a transfer by such a person would be unaffected by section 1491.

Administration proposal

President Clinton's fiscal year 1996 budget proposal was submitted to the Congress on February 6, 1995.[4] On February 16, 1995, certain of the revenue provisions in the President's budget submission were included in the "Tax Compliance Act of 1995," introduced (by request) as H.R. 981 by Representatives Gephardt and Gibbons and as S. 453 by Senators Daschle and Moynihan. Among the provisions of H.R. 981 and S. 453 was a proposal to modify the tax treatment of U.S. citizens who relinquish their citizenship and of certain long-term resident aliens who terminate their U.S. residency status.

The Treasury Department issued a press release on February 6, 1995, stating that the Clinton Administration was proposing legislation aimed at "stopping U.S. multimillionaires from escaping taxes by abandoning their citizenship or by hiding their assets in foreign tax havens."[5] The Treasury Department press release also stated that a few dozen of the 850 people who relinquished their citizenship in 1994 did so to avoid paying tax on the appreciation in value that their assets accumulated while the individuals "enjoyed the benefits of U.S. citizenship." The Treasury Department press release included an example of how a U.S. citizen could expatriate but continue to have a residence and driver's license in the United States and continue to travel on a U.S. passport.

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[4] A copy of the description of the Administration's proposal addressing the tax treatment of expatriation as submitted on February 6, 1995, is included as Appendix D. The Administration submitted no statutory language as part of its February 6, 1995, submission.

[5] Department of the Treasury, Treasury News, "Clinton Offers Plan to Curb Offshore Tax Avoidance," RR-54, February 6, 1995.

Under the Administration proposal, U.S. citizens who relinquish their U.S. citizenship and certain long-term resident aliens who terminate their U.S. residency status generally would be treated as having sold all of their property at fair market value immediately prior to the expatriation or cessation of residence. Gain or loss from the deemed sale would be recognized at that time, generally without regard to other provisions of present law. Any net gain on the deemed sale would be recognized only to the extent it exceeds $600,000 ($1.2 million in the case of married individuals filing a joint return, both of whom expatriate).

Under the Administration proposal, a U.S. citizen would be treated as having relinquished his or her citizenship on the date that the State Department issues a certificate of loss of nationality (or, for a naturalized U.S. citizen, the date that a U.S. court cancels the certificate of naturalization), and would be subject to U.S. tax as a citizen of the United States until that time. A long-term resident who ceases to be taxed as a U.S. resident would be subject to the proposal at the time of such cessation.

The Administration proposal would be effective for U.S. citizens who relinquish their citizenship as otherwise defined in the proposal (i.e., with respect to those U.S. citizens who obtain a certificate of loss of nationality) on or after February 6, 1995, and for long-term residents who terminate their U.S. residency on or after February 6, 1995. Present law would continue to apply to persons who received a certificate of loss of nationality prior to February 6, 1995. However, the Administration proposal would apply to individuals who had performed acts of expatriation before February 6, 1995 (and, therefore, who had lost citizenship under the Immigration and Nationality Act), but who obtained a certificate of loss of nationality on or after February 6, 1995, because of the manner in which the Administration proposal redefines the date of relinquishment of citizenship for purposes of applying the tax on expatriation. It should be noted, however, that the Administration proposal does not change applicable Federal law controlling when the actual loss of U.S. citizenship occurs.

Senate amendment to H.R. 831

The Senate amendment to H.R. 831 (the "Senate bill") adopted a modified version of the Administration proposal with respect to the taxation of U.S. citizens and residents who relinquish their citizenship or residency. The Senate bill modified the Administration proposal in several ways. First, the Senate bill would apply the expatriation tax only to U.S. citizens who relinquish their U.S. citizenship, not to long-term resident aliens who terminate their U.S. residency. Second, the Senate bill would modify the date when an expatriating citizen is treated as relinquishing U.S. citizenship, such that most expatriating citizens are treated as relinquishing their citizenship at an earlier date than under the Administration proposal. The Senate bill also would make some technical modifications to the Administration proposal, including a provision to prevent double taxation in the case of certain property that remains subject to U.S. tax jurisdiction.

Gephardt motion to recommit H.R. 1215

Representative Gephardt included a variation of the Administration proposal in a motion to recommit that was offered on the House floor in connection with the House consideration of H.R. 1215 ("Tax Fairness and Deficit Reduction Act of 1995"). The Gephardt amendment would have changed the effective date in the Administration proposal to October 1, 1996, rather than February 6, 1995. The Gephardt motion was not adopted.

S. 700 (introduced by Senate Moynihan) and H.R. 1535 (introduced by Representative Gibbons)

Senator Moynihan introduced S. 700 on April 6, 1995, and Representative Gibbons introduced an identical bill (H.R. 1535) on May 2, 1995. S. 700 and H.R. 1535 would make several changes to the expatriation proposal included in the Senate amendment to H.R. 831. Among the modifications to the Administration proposal included in S. 700 and H.R. 1535 are the following:

(1) The bills would apply the tax on expatriation to "long-term residents" who terminate their residency in a manner similar to the provision included in the original Administration proposal. A long-term resident would include an individual who has been a lawful permanent resident of the United States (i.e., a green-card holder) in at least 8 of the prior 15 taxable years.

(2) A nonresident alien individual who becomes a citizen or resident of the United States would be required to utilize a fair market value basis (at the time of obtaining citizenship or residency), rather than a historical cost basis, in determining any subsequent gain or loss on the disposition of any property held on the date the individual became a U.S. citizen or resident. Such individuals could elect, on an asset-by-asset basis, to instead use historical cost for purposes of determining gain on asset dispositions.

(3) An expatriating individual would be permitted to irrevocably elect, on an asset-by-asset basis, to continue to be taxed as a U.S. citizen with respect to any assets specified by the taxpayer.

(4) The bills would repeal or modify the present-law "sailing permit" requirement.

(5) The tax on expatriation would not apply to an individual who relinquished U.S. citizenship before attaining the age of 18-1/2, if the individual lived in the United States for less than five taxable years before the date of relinquishment.

(6) The bills would provide that the time for the payment of the tax on expatriation could be deferred to the same extent, and in the same manner, as any estate taxes may be deferred under present law.

(7) The tax on expatriation would be allowed as a credit against any U.S. estate or gift taxes subsequently imposed on the same property solely by reason of the special rules imposing an estate or gift tax on property transferred by an individual who relinquished his U.S. citizenship with a principal pur-

pose of avoiding U.S. taxes within 10 years prior to the transfer.

S. 700 and H.R. 1535 would be effective for individuals who are deemed to have relinquished their U.S. citizenship on or after February 6, 1995, and for long-term residents who cease to be subject to tax as U.S. residents on or after February 6, 1995. Under these bills, an individual would be deemed to have relinquished citizenship on the earliest of (1) the date the individual renounces U.S. nationality before a consular officer, (2) the date the individual furnishes to the State Department a signed statement of voluntary relinquishment confirming the performance of an expatriating act, (3) the date the State Department issues a certificate of loss of nationality, or (4) the date a U.S. court cancels a naturalized citizen's certificate of naturalization. Present law would continue to apply to individuals who relinquished their U.S. citizenship prior to February 6, 1995.

II. PRESENT LAW

A. Taxation of United States Citizens, Residents, and Nonresidents

1. Individual income taxation

a. Income taxation of U.S. citizens and residents

In general

A United States citizen generally is subject to the U.S. individual income tax on his or her worldwide taxable income.[6] All income earned by a U.S. citizen, whether from sources inside or outside the United States, is taxable whether or not the individual lives within the United States. A non-U.S. citizen who resides in the United States generally is taxed in the same manner as a U.S. citizen if the individual meets the definition of a "resident alien," described below.

The taxable income of a U.S. citizen or resident is equal to the taxpayer's total income less certain exclusions, exemptions, and deductions. The appropriate tax rates are then applied to a taxpayer's taxable income to determine his or her individual income tax liability. A taxpayer may reduce his or her income tax liability by any applicable tax credits. When an individual disposes of property, any gain or loss on the disposition is determined by reference to the taxpayer's adjusted cost basis in the property, regardless of whether the property was acquired during the period in which the taxpayer was a citizen or resident of the United States. In general, no U.S. income tax is imposed on unrealized gains and losses.

If a U.S. citizen or resident earns income from sources outside the United States, and that income is subject to foreign income taxes, the individual generally is permitted a foreign tax credit against his or her U.S. income tax liability to the extent of foreign income taxes paid on that income.[7] In addition, a United States citizen who lives and works in a foreign country generally is permitted to exclude up to $70,000 of annual compensation from being subject to U.S. income taxes, and is permitted an exclusion or deduction for certain housing expenses.[8]

Distributions from qualified U.S. retirement plans are includible in gross income under the rules relating to annuities (secs. 72 and 402) and, thus, are generally includible in income, except to the extent the amount received represents investment in the contract (i.e., the employee's basis). Lump-sum distributions are eligible for special 5-year forward averaging and, in some cases, 10-year forward averaging. This forward averaging generally taxes the lump-sum distribution (in the year received) as if it had been received over 5 or 10 years, respectively, rather than in a single year.

Resident aliens

In general, a non-U.S. citizen is considered a resident of the United States if the individual (1) has entered the United States

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[6] The determination of who is a U.S. citizen for tax purposes, and when such citizenship is lost, is governed by the provisions of the Immigration and Nationality Act, 8 U.S.C. section 1401, et seq. See Treas. Reg. section 1.1-1(c).

[7] See Code sections 901-907.

[8] Section 911.

as a lawful permanent U.S. resident (the "green card test"); or (2) is present in the United States for 31 or more days during the current calendar year and has been present in the United States for a substantial period of time—183 or more days during a 3-year period weighted toward the present year (the "substantial presence test").[9]

If an individual is present in the United States for fewer than 183 days during the calendar year, and if the individual establishes that he or she has a closer connection with a foreign country than with the United States and has a tax home in that country for the year, the individual generally is not subject to U.S. tax as a resident on account of the substantial presence test. If an individual is present for as many as 183 days during a calendar year, this closer connections/tax home exception will not be available. An alien who has an application pending to change his or her status to permanent resident or who has taken other steps to apply for status as a lawful permanent U.S. resident is not eligible for the closer connections/tax home exception.

For purposes of applying the substantial presence test, any days that an individual is present as an "exempt individual" are not counted. Exempt individuals include certain foreign government-related individuals, teachers, trainees, students, and professional athletes temporarily in the United States to compete in charitable sports events. In addition, the substantial presence test does not count days of presence of an individual who is physically unable to leave the United States because of a medical condition that arose while he or she was present in the United States, if the individual can establish to the satisfaction of the Secretary of the Treasury that he or she qualifies for this special medical exception.

In some circumstances, an individual who meets the definition of a U.S. resident (as described above) also could be defined as a resident of another country under the internal laws of that country. In order to avoid the double taxation of such individuals, most income tax treaties include a set of "tie-breaker" rules to determine the individual's country of residence for income tax purposes. In general, a dual resident individual will be deemed to be a resident of the country in which he has a permanent home available to him. If the individual has a permanent home available to him in both countries, the individual's residence is deemed to be the country with which his personal and economic relations are closer, i.e., his "center of vital interests." If the country in which he has his center of vital interests cannot be determined, or if he does not have a permanent home available to him in either country, he shall be deemed to be a resident of the country in which he has an habitual abode. If the individual has an habitual abode in both countries or in neither of them, he shall be deemed to be a resident of the country of which he is a citizen. If each country considers him to be its citizen or he is a citizen of neither of them, the competent authori-

[9] The definitions of resident and nonresident aliens are set forth in Code section 7701(b). The substantial presence test will compare 183 days to the sum of (1) the days present during the current calendar year, (2) one-third of the days present during the preceding calendar year, and (3) one-sixth of the days present during the second preceding calendar year. Presence for an average of 122 days (or more) per year over the three-year period would be sufficient to trigger the test.

ties of the countries are to settle the question of residence by mutual agreement.

b. Income taxation of nonresident aliens

Non-U.S. citizens who do not meet the definition of "resident aliens" are considered to be nonresident aliens for tax purposes. Nonresident aliens are subject to U.S. tax only to the extent their income is from U.S. sources or is effectively connected with the conduct of a trade or business within the United States. Bilateral income tax treaties may modify the U.S. taxation of a nonresident alien.

A nonresident alien is taxed at regular graduated rates on net profits derived from a U.S. business.[10] Nonresident aliens also are taxed at a flat rate of 30 percent on certain types of passive income derived from U.S. sources, although a lower treaty rate may be provided (e.g., dividends are frequently taxed at a reduced rate of 15 percent). Such passive income includes interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits and income. There is no U.S. tax imposed, however, on interest earned by nonresident aliens with respect to deposits with U.S. banks and certain types of portfolio debt investments.[11] Gains on the sale of stocks or securities issued by U.S. persons generally are *not* taxable to a nonresident alien because they are considered to be foreign source income.[12]

Nonresident aliens are subject to U.S. income taxation on any gain recognized on the disposition of an interest in U.S. real property.[13] Such gains generally are subject to tax at the same rates that apply to similar income received by U.S. persons. If a U.S. real property interest is acquired from a foreign person, the purchaser generally is required to withhold 10 percent of the amount realized (gross sales price). Alternatively, either party may request that the Internal Revenue Service ("IRS") determine the transferor's maximum tax liability and issue a certificate prescribing a reduced amount of withholding (not to exceed the transferor's maximum tax liability).[14]

Distributions received by nonresidents from U.S. qualified plans and similar arrangements are generally subject to tax to the extent that the amount received is otherwise includible in gross income (i.e., does not represent return of basis) and is from a U.S. source. Employer contributions to qualified plans and other payments for services performed outside the United States generally are not

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[10] Section 871.

[11] See sections 871(h) and 871(i)(3).

[12] Section 865(a).

[13] Sections 897, 1445, 6039C, and 6652(f), known as the Foreign Investment in Real Property Tax Act ("FIRPTA"). Under the FIRPTA provisions, tax is imposed on gains from the disposition of an interest (other than an interest solely as a creditor) in real property (including an interest in a mine, well, or other natural deposit) located in the United States or the U.S. Virgin Islands. Also included in the definition of a U.S. real property interest is any interest (other than an interest solely as a creditor) in any domestic corporation unless the taxpayer establishes that the corporation was not a U.S. real property holding corporation ("USRPHC") at any time during the five-year period ending on the date of the disposition of the interest (sec. 897(c)(1)(A)(ii)). A USRPHC is any corporation, the fair market value of whose U.S. real property interests equals or exceeds 50 percent of the sum of the fair market values of (1) its U.S. real property interests, (2) its interests in foreign real property, plus (3) any other of its assets which are used or held for use in a trade or business (sec. 897(c)(2)).

[14] Section 1445.

treated as income from a U.S. source, and therefore are generally not subject to U.S. tax.[15] The earnings on such contributions, however, may constitute income from a U.S. source and, therefore, may be subject to U.S. tax. Qualified plan benefits (both contributions and earnings) attributable to services performed within the U.S. are generally considered to be from a U.S. source and, therefore, are subject to U.S. tax. Taxable qualified plan benefits are taxed at a rate of 30 percent if the amount is not effectively connected with the conduct of a trade or business in the U.S. If the amount is effectively connected, the normal graduated rates apply.

There is an exemption from U.S. tax for certain qualified plan benefits.[16] Amounts received from a U.S. qualified plan are not subject to U.S. tax if all of the services by reason of which the benefits are payable were performed outside the United States while the individual was a nonresident alien (or the services are considered to be performed outside the United States under section 864(b)(1)) and one of the following applies: (1) at the time payments begin at least 90 percent of the employees for whom contributions or benefits are provided are citizens or residents of the United States; (2) the recipients country of residence grants a similar exclusion from tax for pension benefits to residents and citizens of the United States; or (3) the recipient's country of residence is a beneficiary developing county within the meaning of section 502 of the Trade Act of 1974.

2. Estate and gift taxation

a. In general

The United States imposes a gift tax on any transfer of property by gift made by a U.S. citizen or resident,[17] whether made directly or indirectly and whether made in trust or otherwise. Nonresident aliens are subject to the gift tax with respect to transfers of tangible real or personal property where the property is located in the United States at the time of the gift. No gift tax is imposed, however, on gifts made by nonresident aliens of intangible property having a situs within the United States (e.g., stocks and bonds).[18]

The United States also imposes an estate tax on the worldwide "gross estate" of any person who was a citizen or resident of the United States at the time of death, and on certain property belonging to a nonresident of the United States that is located in the United States at the time of death.[19]

Since 1976, the gift tax and the estate tax have been unified so that a single graduated rate schedule applies to cumulative taxable transfers made by a U.S. citizen or resident during his or her lifetime and at death. Under this rate schedule, the unified estate and gift tax rates begin at 18 percent on the first $10,000 in cumulative taxable transfers and reach 55 percent on cumulative taxable transfers over $3 million.[20] A unified credit of $192,800 is available with respect to taxable transfers by gift and at death. The unified

[15] Section 862.
[16] Section 871(f).
[17] Section 2501.
[18] Section 2501(a)(2).
[19] Sections 2001, 2031, 2101, and 2103.
[20] Section 2001(c).

credit effectively exempts a total of $600,000 in cumulative taxable transfers from the estate and gift tax.

Both the gift tax and the estate tax allow an unlimited deduction for certain amounts transferred from one spouse to another spouse who is a citizen of the United States.[21] In addition, a marital deduction is allowed for both gift tax and estate tax purposes for transfers to spouses who are not citizens of the United States if the transfer is to a qualified domestic trust ("QDOT"). A QDOT is a trust which has at least one trustee that is a U.S. citizen or a domestic corporation and no distributions of corpus can be made unless the U.S. trustee can withhold the tax from those distributions.[22]

A marital deduction generally is not allowed for so-called "terminable interests". Terminable interests generally are created where an interest in property passes to the spouse and another interest in the same property passes from the donor or decedent to some other person for less than full and adequate consideration. For example, an income interest to the spouse generally would not qualify for the marital deduction where the remainder interest is transferred to a third party. An exception exists to the terminable interest rule called the "qualified terminable interest" rule.[23] Under this exception, a transfer to a trust (called a "QTIP") in which the spouse has an income interest for life will qualify for the marital deduction if the transferor elects to include the trust in the spouse's gross estate for Federal estate tax purposes and subjects to gift tax the property in the QTIP if the spouse disposes of the income interest.

Residency for purposes of estate and gift taxation is determined under different rules than those applicable for income tax purposes. In general, an individual is considered to be a resident of the United States for estate and gift tax purposes if the individual is "domiciled" in the United States. An individual is domiciled in the United States if the individual (a) is living in the United States and has the intention to remain in the United States indefinitely; or (b) has lived in the United States with such an intention and has not formed the intention to remain indefinitely in another country. In the case of a U.S. citizen who resided in a U.S. possession at the time of death, if the individual acquired U.S. citizenship solely on account of his birth or residence in a U.S. possession, that individual is not treated as a U.S. citizen or resident for estate tax purposes.[24]

In addition to the estate and gift taxes, a separate transfer tax is imposed on certain "generation-skipping" transfers.

b. Gift tax

Under present law, U.S. citizens and residents are subject to a gift tax on their lifetime transfers by gift. In addition, the exercise or the failure to exercise certain powers of appointment also are subject to the gift tax. Nonresident aliens are subject to gift tax with respect to certain transfers by gift of U.S. situs property. The

[21] Sections 2056 and 2523.
[22] Section 2056A.
[23] Sections 2056(b)(7) and 2523(f).
[24] Section 2209.

amount of the taxable gift is determined by the fair market value of the property on the date of gift. In addition to the marital deduction (discussed above), deductions are allowed for certain charitable and similar gifts.[25] Present law also provides an annual exclusion of $10,000 ($20,000 where the nondonor spouse consents to treat the gift as made one-half by each spouse) of transfers of present interests in property with respect to each donee.

The gift tax is imposed on gifts made in a calendar year and the tax is due by April 15th of the succeeding year.[26]

c. Estate tax

Under present law, an estate tax is imposed on the "taxable estate" of any person who was a citizen or resident of the United States at the time of death. The taxable estate equals the worldwide "gross estate" less allowable deductions, including the marital deduction. Also, several credits, including the unified credit, are allowed that directly reduce the amount of the estate tax.

The estates of nonresident aliens generally are taxed at the same estate tax rates applicable to U.S. citizens, but the taxable estate includes only property situated in the United States that is owned by the decedent at the time of death. Where required by treaty, the estate of a nonresident alien is allowed the same unified credit as a U.S. citizen multiplied by the portion of the total gross estate situated in the United States. In other cases, the estate of a nonresident alien is allowed a unified credit of $13,000 (which effectively exempts the first $60,000 of the estate from tax). This latter rule also applies in the case of residents of U.S. possessions who are not considered citizens of the United States for estate tax purposes.

Determination of gross estate

The gross estate generally includes the value of all property in which a decedent had an interest at his death.[27] The amount included in the gross estate generally is the fair market value of the property at the date of the decedent's death, unless the executor elects to value all property in the gross estate at the alternate valuation date (which is six months after the date of the decedent's death).[28] If certain requirements are met, family farms and real property used in a closely held business may be included in a decedent's gross estate at the current use value, rather than full fair market value. Use of this special valuation rule may not reduce the gross estate by more than $750,000.[29]

In addition, the gross estate includes the value of certain properties not owned by the decedent at the time of his death if certain circumstances are met. These include, generally, predeath transfers for less than adequate and full consideration if (1) the decedent retained the beneficial enjoyment of the property during his life, (2) the property was previously transferred during the decedent's lifetime but the transfer takes effect at the death of the decedent, and

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[25] Sections 2522-2523.

[26] An extension to pay gift tax is granted to the date to which an extension to pay income tax for the year of gift has been granted (sec. 6075).

[27] Section 2031.

[28] Section 2032.

[29] Section 2032A.

(3) the decedent retained the power to alter, amend, revoke, or terminate a previous lifetime transfer.[30] The gross estate generally also includes the value of an annuity if the decedent had retained a right to receive payments under the annuity.[31] In addition, the gross estate includes the value of property subject to certain general powers of appointment possessed by the decedent.[32] Lastly, the gross estate includes the proceeds of life insurance on the decedent's life if the insurance proceeds are receivable by the executor of the decedent's estate or the decedent possessed an incident of ownership in the policy.[33]

Beneficial interests in a trust that the decedent owns at the time of his death and which do not terminate with his death generally are includible in his or her gross estate. These interests can include income interests for a term of years or for the life of another person (i.e., an estate "per autre vie"), and reversionary interests and remainder interests that are not contingent upon survivorship.[34] In contrast, a life estate or any other interest of the decedent that terminates at death (e.g., a remainder interest contingent upon survivorship) will not be includible in the gross estate.

Qualified retirement plan benefits are includible in the gross estate. There is an addition to the estate tax equal to 15 percent of excess retirement accumulations.[35] In general, excess retirement accumulations are the excess of the decedent's interests in qualified plans over the present value of a single life annuity with annual payments equal to the maximum that could be paid without imposition of the tax on excess pension distributions.

Several special rules govern the treatment of jointly held property for estate tax purposes.[36] In general, under these rules, the gross estate includes the value of property held jointly at the time of the decedent's death by the decedent and another person or persons with the right of survivorship, except that portion of the property that was acquired by the other joint owner, or owners, for adequate and full consideration, or by bequest or gift from a third party. However, with respect to certain qualified interests held in joint tenancy by the decedent and his spouse, one-half of the value of such interest is included in the gross estate of the decedent at the date of the decedent's death (or alternate valuation date), regardless of which joint tenant furnished the consideration. An interest is a qualified joint interest if the decedent and the decedent's spouse hold the property as (1) tenants by the entirety, or (2) joint tenants with right of survivorship, but only if the joint tenants cannot be persons other than the decedent and his spouse.

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[30] Sections 2036-2038.
[31] Section 2039.
[32] Section 2041.
[33] Section 2042.
[34] See, e.g., Rev. Rul. 67-370, 1967-2 C.B. 324 (holding that decedent's contingent remainder interest in a trust would be includible in his gross estate because the interest survived his death, even though the grantor (who survived the decedent) retained the right to revoke the interest and did in fact later revoke the interest).
[35] Section 4980A(d).
[36] Section 2040. These rules apply to forms of ownership where there is a right of survivorship upon the death of one of the joint tenants. They do not apply to community property or property owned as tenants in common.

Payment of tax

The estate tax generally is due 9 months after the date of death.[37] The IRS may grant an extension to pay estate tax upon a showing of reasonable cause for a period not exceeding 10 years.[38] In addition, in the case of estate tax attributable to interests in certain closely-held businesses, the executor may elect to pay such estate tax over a 14-year period—interest only for 4 years and principal and interest over the next 10 years.[39] Finally, the executor may elect to pay estate tax and accumulated interest on remainder or reversionary interests 6 months after the termination of the preceding interest (plus an additional period not to exceed 3 years for reasonable cause).[40]

d. Generation-skipping transfer tax

Under chapter 13,[41] a separate transfer tax is imposed on generation skipping transfers in addition to any estate or gift tax that is normally imposed on such transfers. This tax is generally imposed on transfers, either directly or through a trust or similar arrangement, to a beneficiary in more than one generation below that of the transferor. The generation-skipping transfer tax is imposed at a flat rate of 55 percent on generation-skipping transfers in excess of $1 million.

3. Income taxation of trusts, estates, and their beneficiaries

a. Taxation of the trust or estate

A trust or estate is treated as a separate taxable entity, except in cases where the grantor (or a person with a power to revoke) has certain powers with respect to the trust (discussed below). A trust or estate generally is taxed like an individual with certain exceptions. These exceptions include: (1) a separate tax rate schedule applicable to estates and trusts; (2) an unlimited charitable deduction for amounts paid to (and, in the case of estates, amounts permanently set aside for) charity; (3) a personal exemption of $600 for an estate, $300 for a trust that is required to distribute all of its income currently, or $100 for any other trust; (4) no standard deduction for trusts and estates; and (5) a deduction for distributions to beneficiaries.

An estate can elect to use any fiscal year as its taxable year while a trust is required to use a calendar year. Trusts and estates (for years more than two years after the decedent's death) generally are required to pay estimated income tax.

b. Taxation of distributions to beneficiaries

Distributions from a trust or estate to a beneficiary generally are includible in the beneficiary's gross income to the extent of the distributable net income ("DNI") of the trust or estate for the taxable year ending with, or within, the taxable year of the beneficiary. DNI is taxable income (1) increased by any tax-exempt income (net of disallowed deductions attributable to such income) and (2) com-

[37] The IRS may grant an extension for a period not to exceed six months (section 6081).
[38] Section 6161(a).
[39] Section 6166.
[40] Section 6163.
[41] Sections 2601-2663.

puted without regard to personal exemptions, the distribution deduction, capital gains that are allocated to corpus and not distributed to any beneficiary during the taxable year or set aside for charitable purposes, capital losses other than capital losses taken into account in determining the amount of capital gains which are paid to beneficiaries, and (with respect to simple trusts) extraordinary dividends which are not distributed to beneficiaries. In the case of a foreign trust,[42] DNI also includes foreign-source income less related deductions, income that is exempt under treaties, and capital gains reduced (but not below zero) by capital losses. Also, to determine DNI, the exclusion for small business capital gains under section 1202 is not taken into account.

DNI has the following three functions: (1) it measures the amount of the deduction to the trust or estate for distributions to beneficiaries, (2) it measures the amount of distributions that is taxable to the beneficiaries, and (3) it determines the character of the income to the beneficiaries. In effect, DNI is allocated to distributions in the following order: first, to distributions that are required to be made out of income for the year; second, to distributions of income made to charities; and lastly, to all other distributions. The character of the amounts includible in gross income is the same proportion of each class of items includible in distributable net income as the total of each class bears to total distributable net income.

There are two exceptions to these rules. First, distributions as a gift or bequest of specific property or a specific sum of money that is paid in not more than 3 installments are not includible in the gross income of the beneficiary. Second, distributions from a separate and independent share of a trust to a beneficiary of that trust share is treated as a distribution from a separate trust. Existing Treasury regulations (Treas. Reg. sec. 1.663(c)-3) provide that "[t]he application of the separate share rule...will generally depend upon whether distributions of the trust are to be made in substantially the same manner as if separate trusts had been created.... Separate share treatment will not be applied to a trust or portion of a trust subject to a power to distribute, apportion, or accumulate income or distribute corpus to or for the use of one or more beneficiaries within a group or class of beneficiaries, unless the payment of income, accumulated income, or corpus of a share of one beneficiary cannot affect the proportionate share of income, accumulated income, or corpus of any shares of the other beneficiaries, or unless substantially proper adjustment must thereafter be made under the governing instrument so that substantially separate and independent shares exist."

Distributions to beneficiaries of trusts (but not estates) out of previously accumulated income are taxed to the beneficiaries under a throwback rule. The effect of the throwback rule is to impose an additional tax on the distribution of previously accumulated income in the year of distribution at the average marginal rate of the beneficiary in the previous five years. The amount of the distribution is grossed-up by the amount of the taxes paid by the trust on the

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[42] A foreign trust is a trust whose income from sources outside the United States, which is not effectively connected with the conduct of a trade or business within the United States, is not included in gross income for U.S. income tax purposes. Section 7701(a)(31).

accumulated income and a nonrefundable credit is allowed to the beneficiary for such taxes. In order to prevent trusts from accumulating income for a year, the fiduciary of a trust may elect to treat distributions within the first 65 days after the close of its taxable year as having occurred at the end of the preceding taxable year.

c. Grantor trust rules

Under the grantor trust rules,[43] the grantor of a trust will continue to be taxed as the owner of the trust (or a portion thereof) if certain rights or powers are retained by the grantor. A grantor of a trust generally is treated as the owner of any portion of a trust when the following circumstances exist:

(1) the grantor has a reversionary interest that has more than a 5-percent probability of returning to the grantor.
(2) the grantor has power to control beneficial enjoyment of the income or corpus. Certain powers are disregarded for this purpose—(a) a power to apply income to support of a dependent; (b) a power affecting beneficial enjoyment that can be exercised only after an event that has a 5 percent or less probability of occurring; (c) a power exercisable only by will; (d) a power to allocate among charities; (e) a power to distribute corpus under an ascertainable standard or as an advancement; (f) a power to withhold income temporarily; (g) a power to withhold income during disability; (h) a power to allocate between corpus and income; (i) a power to distribute, apportion, or accumulate income or corpus among a class of beneficiaries that is held by an independent trustee or trustees; and, (j) a power to distribute, apportion, or accumulate income among beneficiaries that is limited by an ascertainable standard.
(3) the grantor retains any of the following administrative powers—(a) a power to deal at non-arms' length; (b) a power to borrow trust funds without adequate interest or security; (c) a borrowing that extends over one taxable year; (d) a power to vote stock of a controlled corporation held in the trust; (e) a power to control investment of trust funds in a controlled corporation; and (f) a power to reacquire trust corpus by substituting property with equivalent value.
(4) the grantor has a power to revoke, unless such power may not be exercised any time before an event that has a 5-percent probability or less of occurring.
(5) the income is or may be distributed to, held for the future benefit of, or used to pay for life insurance on the lives of, the grantor or the grantor's spouse, unless such power may not be exercised any time before an event that has a 5-percent probability or less of occurring. (An exception is provided for income that may be used to discharge an obligation of support, unless the income is so used.)

If the grantor is not treated as the owner of any portion of a trust, another person generally will be treated as the owner of that portion of the trust if he or she has the power to revoke that portion of the trust or gave up a power to revoke and retained any of

[43] Sections 671-679.

the powers set forth above, unless the retained power is disclaimed within a reasonable time.

A U.S. person who transfers property to a foreign trust generally is treated as the owner, under the grantor trust rules, of the portion of the trust comprising that property for any taxable year in which there is a U.S. beneficiary of any portion of the trust. This treatment generally does not apply, however, to transfers by reason of death; to sales or exchanges of property at fair market value, where gain is recognized to the transferor; or to transfers made before the transferor became a U.S. person.

d. Taxation on disposition of interests in trusts

In general, the gain or loss on the sale or other disposition of an asset is the difference between the amount realized on the sale or disposition of the asset and the taxpayer's adjusted basis in that property.[44] A trust's basis in an asset contributed to the trust is the same as the contributor's basis in that asset increased by any gain or decreased by any loss recognized on the transfer. A beneficiary's basis in his interest in a trust generally is the same as the trust's basis in the asset.[45] "If the [trust] property is an investment made by the fiduciary (as, for example, in the case of a sale by the fiduciary of property transferred by the grantor, and reinvestment of the proceeds), the cost or other basis to the fiduciary is taken in lieu of the [grantor's basis]."[46]

When a life estate and remainder interest in property are acquired by gift, bequest, or inheritance, a so-called "uniform basis" rule is applied with the basis of the property being divided between the life estate and the remainder interest. As the life estate is used up each year, its basis is reduced, and the basis of the remainder interest increases in the same amount; hence, the combined basis of the life estate and the remainder interest remains the same from year to year.

Under a special rule applicable in determining gain or loss from the sale or other disposition of a "term interest" in property, that portion of the adjusted basis of such interest which is determined as a carryover basis as a result of a transfer of the property by gift (section 1015) or a stepped-up basis as a result of the property being transferred at death (section 1014) generally is disregarded.[47] For purposes of the rule, a "term interest" includes a life estate, an interest for a term of years, or an income interest.[48] A "term interest" includes an interest which will terminate upon the happening of an event, but does not include a remainder or reversionary interest or an interest that will ripen into ownership upon the termination of a preceding interest.[49]

e. Residence of trusts

An estate or trust is treated as foreign if it is not subject to U.S. income taxation on its income that is neither derived from U.S.

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[44] Section 1001(a).
[45] Treas. Reg. section 1.1015-2(a).
[46] Treas. Reg. section 1.1015-2(b). See also Treas. Reg. section 1.1014-5(c).
[47] Section 1001(e). This special rule does not apply to a sale or disposition of the life estate as part of a transaction in which the entire interest in property is transferred to any person or persons (sec. 1001(e)(3)).
[48] Section 1001(b)(2).
[49] Treas. Reg. section 1.1001-1(f)(2).

sources nor effectively connected with the conduct of a trade or business within the United States.[50] Thus, if a trust is taxed in a manner similar to a nonresident alien individual, it is considered to be a foreign trust. Any other estate or trust is treated as domestic.[51]

The Code does not specify what characteristics must exist before a trust is treated as being comparable to a nonresident alien individual. IRS rulings and court cases, however, indicate that this status depends on various factors, such as the residence of the trustee, the location of the trust assets, the country under whose laws the trust is created, the nationality of the grantor, and the nationality of the beneficiaries.[52] If an examination of these factors indicates that a trust has sufficient foreign contacts, it is deemed comparable to a nonresident alien individual and, thus, is a foreign trust.

4. Special tax rules with respect to the movement of persons and property into or out of the United States

a. Individuals who relinquish U.S. citizenship with a principal purpose of avoiding U.S. tax

An individual who relinquishes his U.S. citizenship with a principal purpose of avoiding U.S. taxes is subject to an alternative method of income taxation for 10 years after expatriation under section 877 of the Code.[53] Under this provision, if the Treasury Department establishes that it is reasonable to believe that the expatriate's loss of U.S. citizenship would, but for the application of this provision, result in a substantial reduction in U.S. tax based on the expatriate's probable income for the taxable year, then the expatriate has the burden of proving that the loss of citizenship did not have as one of its principal purposes the avoidance of U.S. income, estate or gift taxes. Section 877 does *not* apply to resident aliens who terminate their U.S. residency.

The alternative method modifies the rules generally applicable to the taxation of nonresident aliens in two ways. First, the expatriate is subject to tax on his or her U.S. source income at the rates applicable to U.S. citizens rather than the rates applicable to other nonresident aliens. (Unlike U.S. citizens, however, individuals subject to section 877 are not taxed on any foreign source income.) Second, the scope of items treated as U.S. source income for section 877 purposes is broader than those items generally considered to be U.S. source income under the Code. For example, gains on the sale of personal property located in the United States, and gains on the sale or exchange of stocks and securities issued by U.S. persons, generally are not considered to be U.S. source income under the Code. However, if an individual is subject to the alternative taxing

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[50] Section 7701(a)(31).

[51] Section 7701(a)(30).

[52] For example, see Rev. Rul. 87-61, 1987-2 C.B. 219, Rev. Rul. 81-112, 1981-1 C.B. 598, Rev. Rul. 60-181, 1960-1 C.B. 257, and *B.W. Jones Trust v. Commissioner*, 46 B.T.A. 531 (1942), *aff'd*, 132 F.2d 914 (4th Cir. 1943).

[53] Treasury regulations provide that an individual's citizenship status is governed by the provisions of the Immigration and Nationality Act, specifically referring to the "rules governing loss of citizenship [set forth in] sections 349 to 357, inclusive, of such Act (8 U.S.C. 1481-1489)." Treas. Reg. section 1.1-1(c). Under the Immigration and Nationality Act, an individual is generally considered to lose U.S. citizenship on the date that an expatriating act is committed. The present law rules governing the loss of citizenship, and a description of the types of expatriating acts that lead to a loss of citizenship, are discussed more fully in Part B.1., below.

method of section 877, such gains are treated as U.S. source income with respect to that individual. The alternative method applies only if it results in a higher U.S. tax liability than would otherwise be determined if the individual were taxed as a nonresident alien.

Because section 877 alters the sourcing rules generally used to determine the country having primary taxing jurisdiction over certain items of income, there is an increased potential for such items to be subject to double taxation. For example, a former U.S. citizen subject to the section 877 rules may have capital gains derived from stock in a U.S. corporation. Under section 877, such gains are treated as U.S. source income, and, therefore, are subject to U.S. tax. Under the internal laws of the individual's new country of residence, however, that country may provide that all capital gains realized by a resident of that country are subject to taxation in that country, and thus the individual's gain from the sale of U.S. stock also would be taxable in his country of residence. If the individual's new country of residence has an income tax treaty with the United States, the treaty may provide for the amelioration of this potential double tax. (See Part V.F. for a more detailed discussion of the double taxation issues and their treatment under existing U.S. tax treaties.)

Similar rules apply in the context of estate and gift taxation if the transferor relinquished U.S. citizenship with a principal purpose of avoiding U.S. taxes within the 10-year period ending on the date of the transfer. A special rule applies to the estate tax treatment of any decedent who relinquished his U.S. citizenship within 10 years of death, if the decedent's loss of U.S. citizenship had as one of its principal purposes a tax avoidance motive.[54] Once the Secretary of the Treasury establishes a reasonable belief that the expatriate's loss of U.S. citizenship would result in a substantial reduction in estate, inheritance, legacy and succession taxes, the burden of proving that one of the principal purposes of the loss of U.S. citizenship was *not* avoidance of U.S. income or estate tax is on the executor of the decedent's estate.

In general, the estates of such individuals are taxed in accordance with the rules generally applicable to the estates of nonresident aliens (i.e., the gross estate includes all U.S.-situs property held by the decedent at death, is subject to U.S. estate tax at the rates generally applicable to the estates of U.S. citizens, and is allowed a unified credit of $13,000, as well as credits for State death taxes, gift taxes, and prior transfers). However, a special rule provides that the individual's gross estate also includes his pro-rata share of any U.S.-situs property held through a foreign corporation in which the decedent had a 10-percent or greater interest, provided that the decedent and related parties together owned more than 50 percent of the voting power of the corporation. Similarly, gifts of intangible property having a situs within the United States (e.g., stocks and bonds) made by a nonresident alien who relinquished his U.S. citizenship within the 10-year period ending on the date of transfer are subject to U.S. gift tax, if the loss of U.S.

[54] Section 2107.

citizenship had as one of its principal purposes a tax avoidance motive.[55]

b. Aliens having a break in residency status

A special rule applies in the case of an individual who has been treated as a resident of the United States for at least three consecutive years, if the individual becomes a nonresident but regains residency status within a three-year period.[56] In such cases, the individual is subject to U.S. tax for all intermediate years under the section 877 rules described above (i.e., the individual is taxed in the same manner as a U.S. citizen who renounced U.S. citizenship with a principal purpose of avoiding U.S. taxes). The special rule for a break in residency status applies regardless of the subjective intent of the individual.

c. Aliens who physically leave the United States

Any alien, resident or nonresident, who physically leaves the United States or any possession thereof is required to obtain a certificate from the IRS District Director that he or she has complied with all U.S. income tax obligations.[57] This certificate often is referred to as a "sailing permit." The certificate may not be issued unless all income tax due up until the time of departure has been paid, or an adequate bond or other security has been posted, or the Treasury Secretary finds that the collection of the tax will not be jeopardized by the departure of the alien. Exceptions are provided for aliens who have been in the United States for less than five days, foreign diplomats and their servants, certain short-term business visitors and industrial trainees, military trainees, individuals who commute to U.S. places of employment from Canada or Mexico, certain alien students, and exchange visitors. There is no exception provided for resident aliens who intend to maintain their U.S. residence. Thus, an alien who is a lawful permanent resident of the United States living near the Canadian or Mexican border is technically required to obtain a departure certificate before crossing the border to shop or have dinner. In actual practice, aliens who leave the United States generally do not comply with this requirement. Moreover, some IRS district directors will not even consider issuing such certificates.

d. Transfers to foreign corporations

Certain transfers of property by shareholders to a controlled corporation generally are tax-free if the persons transferring the property own at least 80 percent of the corporation after the transfer.[58] Also, in certain corporate reorganizations, including qualifying acquisitions and dispositions, shareholders of one corporation may exchange their stock or securities for stock or securities of another corporation that is a party to the reorganization without a taxable event, except to the extent they receive cash or other property that is not permitted stock or securities. In these cases, a corporation also may transfer property to another corporation that is a party to the reorganization, without a taxable event except to the extent

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[55] Section 2501(a)(3).
[56] Section 7701(b)(10).
[57] Section 6851(d).
[58] Section 351.

of certain non-permitted consideration.[59] Also, a liquidation of an 80-percent owned corporate subsidiary into its parent corporation generally is tax-free.[60]

Under the rules applicable to these types of transfers, property transferred to a corporation retains its basis, to the extent the transfer was tax-free, so that any appreciation (i.e., built in gain) will be subject to tax if the property is subsequently sold by the recipient corporation. Similarly, a shareholder who exchanges stock of one corporation for stock of another retains his original basis so that a subsequent sale of the acquired stock can produce a taxable gain.

Section 367 applies special rules, however, if property is transferred by a U.S. person to a foreign corporation in a transaction that would otherwise be tax-free under these provisions. These special rules are generally directed at situations where property is transferred to a foreign corporation, outside of the U.S. taxing jurisdiction, so that a subsequent sale by that corporation could escape U.S. tax notwithstanding the carryover basis of the asset. In some instances, such a transfer causes an immediate taxable event so that the generally applicable tax-free rules are overridden. In other instances, the taxpayer may escape immediate tax by entering a gain recognition agreement ("GRA") obligating the taxpayer to pay tax if the property is disposed of within a specified time period after the transfer. The GRA rules generally require the taxpayer to agree to file an amended return for the year of the original transfer if the property is disposed of by the transferee (including payment of interest from the due date of the return for the year of the original transfer to the time the additional tax under the agreement is actually paid following the disposition).

Section 367 also imposes rules directed at situations where a U.S. person has an interest in a foreign corporation, such as a controlled foreign corporation ("CFC") meeting specific U.S. shareholder ownership requirements, that could result in the U.S. person being taxed on its share of certain foreign corporate earnings. These rules are designed to prevent the avoidance of tax in circumstances where a reorganization or other nonrecognition transaction restructures the stock or asset ownership of the foreign corporation so that the technical requirements for imposition of U.S. tax on foreign earnings under the CFC or other rules are no longer met, so that there is potential for removing the earnings of the original CFC from current or future U.S. tax, or changing the character of the earnings for U.S. tax purposes (e.g. from dividend to capital gain).

The rules of section 367 generally do not apply unless there is a transfer by a U.S. person to a foreign corporation, or unless a foreign corporation of which a U.S. person is a shareholder engages in certain transactions. Because an individual who expatriates is no longer a U.S. person, section 367 has no effect on actions taken by such individuals after expatriation. The Treasury Department has considerable regulatory authority under section 367 to address situations that may result in U.S. tax avoidance. For example, sec-

[59] Sections 368, 354, 356, and 361. (See also sec. 355.)
[60] Section 332.

tion 367(b) provides that any of certain tax-free corporate transactions that do not involve a transfer of property from a U.S. person (described in section 367(a)(1)) can be recharacterized as taxable "to the extent provided in regulations prescribed by the Secretary which are necessary or appropriate to prevent the avoidance of Federal income taxes." The legislative history of this provision suggests that it was directed principally at situations involving avoidance of U.S. tax on foreign earnings and profits;[61] and it does not appear that Treasury has either considered application of the current provision to expatriation situations or sought expansion of that regulatory authority. Under the existing section 367 regulations and the relevant expatriation sections of the Code, a U.S. person who expatriates, even for a principal purpose of avoiding U.S. tax, may subsequently engage in transactions that involve the transfer of property to a foreign corporation without any adverse consequences under section 367, since expatriation (even for a principal purpose of tax avoidance) is not an event covered by section 367 or the current regulations under that section. Similarly, a U.S. person who has expatriated would not be considered a U.S. shareholder for purposes of applying the rules that address restructurings of foreign corporations with U.S. shareholders. By engaging in such a transaction, a taxpayer that has expatriated could transfer assets that would otherwise generate income which would be subject to tax under section 877 into a foreign corporation, thus transforming the income into non-U.S. source income not subject to tax under section 877. For example, under section 877, if a principal purpose of tax avoidance existed, an expatriate would be taxed for 10 years on any sale of U.S. corporate stock. However, after expatriation, the person would no longer be a U.S. person for purposes of section 367, and thus could transfer U.S. corporate stock to a foreign corporation controlled by the expatriate under section 351 without any section 367 effect. The foreign corporation could then sell the U.S. corporate stock within the 10 year period, but the gain would not be subject to U.S. tax.

In addition, the IRS or Treasury might encounter difficulties enforcing a gain recognition agreement if a U.S. person who has entered into such an agreement to pay tax on a later disposition of an asset subject to the agreement and then expatriates. The gain recognition agreement regulations contain provisions requiring security arrangements if a U.S. natural person who has entered an agreement dies (or if a U.S. entity goes out of existence) but these provisions do not apply if a U.S. natural person expatriates.[62]

Even if an individual is subject to the alternative taxing method of section 877 (because the person expatriated with a principal purpose of avoiding U.S. tax), section 877 does not impose a tax on foreign source income. Thus, such an individual could expatriate and subsequently transfer appreciated property to a foreign corporation or other entity beyond the U.S. taxing jurisdiction, without any U.S. tax being imposed on the appreciation under section 877.

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[61] See, e.g., H. Rept. No. 94-658 pp. 239-248 (94th Cong. 1st Sess., 1975); S. Rept. No. 94-938, pp. 261-271 (94th Cong., 2d Sess., 1976); H. Rept. No. 94-1515, p. 463 (94th Cong., 2d Sess., 1976)

[62] See, e.g., Temp. Reg. section 1.367(a)-3T(g)(9) and (10), Notice 87-85, 1987-2 C.B. 395.

Similar issues exist under section 1491 of the Code. Section 1491 imposes a 35-percent tax on otherwise untaxed appreciation when appreciated property is transferred by a U.S. citizen or resident, or by a domestic corporation, partnership, estate or trust, to certain foreign entities in a transaction not covered by section 367. In some cases, taxpayers may elect to enter into a gain recognition agreement (rather than pay immediate tax) pursuant to section 1492.[63] As in the case of section 367, an individual who has expatriated is no longer a U.S. citizen and may also no longer be a U.S. resident, thus a transfer by such a person would be unaffected by section 1491.

[63] See, e.g., PLR 9103033.

B. Requirements for United States Citizenship, Immigration, and Visas

1. United States citizenship

An individual may acquire U.S. citizenship in one of three ways: (1) being born within the geographical boundaries of the United States; (2) being born outside the United States to at least one U.S. citizen parent (as long as that parent had previously been resident in the United States for a requisite period of time); or (3) through the naturalization process. All U.S. citizens are required to pay U.S. income taxes on their worldwide income. The State Department estimates that there are approximately 3 million U.S. citizens living abroad, although thousands of these individuals may not even know that they are U.S. citizens.

A U.S. citizen may voluntarily give up his or her U.S. citizenship at any time by performing one of the following acts ("expatriating acts") with the intention of relinquishing U.S. nationality: (1) becoming naturalized in another country; (2) formally declaring allegiance to another country; (3) serving in a foreign army; (4) serving in certain types of foreign government employment; (5) making a formal renunciation of nationality before a U.S. diplomatic or consular officer in a foreign country; (6) making a formal renunciation of nationality in the United States during a time of war; or, (7) committing an act of treason.[64] An individual who wishes to formally renounce citizenship (item (5), above), must execute an Oath of Renunciation before a consular officer, and the individual's loss of citizenship is effective on the date the oath is executed. In all other cases, the loss of citizenship is effective on the date that the expatriating act is committed, even though the loss may not be documented until a later date. The State Department generally documents loss in such cases when the individual acknowledges to a consular officer that the act was taken with the requisite intent. In all cases, the consular officer abroad submits a certificate of loss of nationality ("CLN") to the State Department in Washington, D.C. for approval.[65] Upon approval, a copy of the CLN is issued to the affected individual. The date upon which the CLN is approved is not the effective date for loss of citizenship.

If a CLN is not issued because the State Department does not believe that an expatriating act has occurred (for example, if the requisite intent appears to be lacking), the issue is likely to be resolved through litigation. If it is determined that the individual has indeed committed an expatriating act, the date for loss of citizenship will be the date of the expatriating act.

A child under the age of 18 cannot lose U.S. citizenship by naturalizing in a foreign state or by taking an oath of allegiance to a foreign state. A child under 18 can, however, lose U.S. citizenship by serving in a foreign military or by formally renouncing citizenship, but such individuals may regain their citizenship by asserting a claim of citizenship before reaching the age of eighteen years and six months.

[64] 8 U.S.C. section 1481.
[65] 8 U.S.C. section 1501.

A naturalized U.S. citizen can have his or her citizenship involuntarily revoked if a U.S. court determines that the certificate of naturalization was illegally procured, or was procured by concealment of a material fact or by willful misrepresentation (for example, if the individual concealed the fact that he served as a concentration camp guard during World War II).[66] In such cases, the individual's certificate of naturalization is cancelled, effective as of the original date of the certificate; in other words, it is as if the individual were never a U.S. citizen at all.

2. United States immigration and visas

In general, a non-U.S. citizen who enters the United States is required to obtain a visa.[67] An immigrant visa (also known as a "green card") is issued to an individual who intends to relocate to the United States permanently. Various types of nonimmigrant visas are issued to individuals who come to the United States on a temporary basis and intend to return home after a certain period of time. The type of nonimmigrant visa issued to such individuals is dependent upon the purpose of the visit and its duration. An individual holding a nonimmigrant visa is prohibited from engaging in activities that are inconsistent with the purpose of the visa (for example, an individual holding a tourist visa is not permitted to obtain employment in the United States).

Nonimmigrant visas are available to the following categories of individuals: foreign diplomats ("A"); temporary business visitors ("B-1"); tourists ("B-2"); travelers in transit through the United States to another destination ("C"); crew members of foreign airlines or ships ("D"); treaty traders ("E-1"); treaty investors ("E-2"); students ("F"); employees of international organizations or governmental agencies ("G"); nurses, professionals in specialty occupations, temporary workers performing services unavailable in the United States, and participants in job training programs ("H"); employees of foreign media organizations ("I"); exchange visitors ("J"); fiances/fiancees of U.S. citizens ("K"); intracompany transferees ("L"); vocational and other nonacademic students ("M"); certain present or former employees of international organizations, their parents and siblings ("N"); representatives of NATO member states ("NATO" visas); aliens with extraordinary abilities in sciences, arts, education, business or athletics ("O"); internationally recognized athletes and entertainers ("P"); participants in international cultural exchange programs ("Q"); and, religious workers ("R"). For most of these categories, a qualifying individual and members of his or her immediate family would be eligible for the category of visa involved.

Foreign business people and investors often obtain "E" visas to come into the United States. Generally, an "E" visa is initially granted for a one-year period, but it can be routinely extended for additional two-year periods. There is no overall limit on the

[66] See section 340(a) of the Immigration and Nationality Act, 8 U.S.C. section 1451(a). See also, *U.S. v. Demjanjuk*, 680 F.2d 32, *cert. denied*, 459 U.S. 1036 (1982).

[67] Under the Visa Waiver Pilot Program, nationals of most European countries are not required to obtain a visa to enter the United States if they are coming as tourists and staying a maximum of 90 days. Also, citizens of Canada, Mexico, and certain islands in close proximity to the United States do not need visas to enter the United States, although other types of travel documents may be required.

amount of time an individual may retain an "E" visa. There are two types of "E" visas: an "E-1" visa, for "treaty traders" and an "E-2" visa, for "treaty investors". To qualify for an "E-1" visa, an individual must be a national of a country that has a treaty of trade with the United States, and must be coming to the United States solely to engage in substantial trade principally between the U.S. and that country. Trade includes the import and export of goods or services. At least 50 percent of the foreign-based company must be owned by nationals of that country, and at least 50 percent of the shareholders must either live abroad, or have an "E-1" visa and live in the United States (thus, an individual holding a "green card" would not be counted). Over 50 percent of the individual's business must be between the U.S. and the foreign company. To qualify for an "E-2" visa, an individual (or a company of which he is an executive, manager, or essential employee) must be a national of a country that has a treaty investor agreement with the United States, and must be coming to the United States solely to develop and direct the operations of an enterprise in which he has invested, or is actively in the process of investing, a substantial amount of capital.

3. Relinquishment of green cards

There are several ways in which a green card can be relinquished. First, an individual who wishes to terminate his or her permanent residency may simply return his or her green card to the INS. Second, an individual may be involuntarily deported from the United States (through a judicial or administrative proceeding), and the green card would be cancelled at that time. Third, a green card holder who leaves the United States and attempts to re-enter more than a year later may have his or her green card taken away by the INS border examiner, although the individual may request a hearing before an immigration judge to have the green card reinstated. A green-card holder may permanently leave the United States without relinquishing his or her green card, although such individuals would continue to be taxed as U.S. residents.[68]

[68] Code section 7701(b)(6)(B) provides that an individual who has obtained the status of residing permanently in the United States as an immigrant (i.e., an individual who has obtained a green card) will continue to be taxed as a lawful permanent resident of the United States until such status is revoked, or is administratively or judicially determined to have been abandoned.

III. PROPOSALS TO MODIFY TAX TREATMENT OF U.S. CITIZENS AND RESIDENTS WHO RELINQUISH CITIZENSHIP OR RESIDENCE

A. Administration's Fiscal Year 1996 Budget Proposal (H.R. 981 and S. 453)

Description of Proposal

In general

The Administration proposal to modify the tax treatment of U.S. citizens and residents who relinquish their U.S. citizenship or residence was transmitted to the Congress in conceptual form in the President's fiscal year 1996 budget proposal on February 6, 1995. The statutory language of the proposal was included in the revenue provisions of the Administration's fiscal year 1996 budget proposal that was introduced (by request) in the House (in H.R. 981) and the Senate (in S. 453) on February 16, 1995. Under the Administration proposal, U.S. citizens who relinquish their U.S. citizenship and certain long-term resident aliens who terminate their U.S. residency generally would be treated as having sold all of their property at fair market value immediately prior to the expatriation or cessation of residence. Gain or loss from the deemed sale would be recognized at that time, generally without regard to other provisions of the Code.[69] Any net gain on the deemed sale would be recognized to the extent it exceeds $600,000 ($1.2 million in the case of married individuals filing a joint return, both of whom expatriate).

Property taken into account

Assets within the scope of the proposal generally would include all property interests that would be included in the individual's gross estate under the Federal estate tax if such individual were to have died on the day of the deemed sale, plus any interest the individual holds as a beneficiary of a foreign or domestic trust that is not otherwise included in the gross estate (see "Interests in trusts", below), and other interests that could be specified by the Treasury Department to carry out the purposes of the provision. U.S. real property interests, which remain subject to U.S. taxing jurisdiction in the hands of nonresident aliens, generally would be excepted from the proposal.[70] An exception would apply to interests in qualified retirement plans and, subject to a limit of $500,000, interests in certain foreign pension plans. The IRS would be authorized to allow a taxpayer to defer, for a period of no more than five years, payment of the tax attributable to the deemed sale of a closely-held business interest (as defined in present-law section 6166(b)). In addition, under present law, the IRS may permit further deferral of the payment of tax under appropriate agreements.

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[69] See the discussion of the application of the Code's income exclusions under "Other special rules" below.

[70] The exception would apply to all U.S. real property interests, as defined in section 897(c)(1), except the stock of a United States real property holding company that does not satisfy the requirements of section 897(c)(2) on the date of the deemed sale.

Interests in trusts

Under the Administration proposal, any trust interest held by an expatriating individual would be deemed to be sold immediately prior to the expatriation. This provision would require that trust interests be valued specifically for this purpose. For example, a trust instrument may provide that one individual (the "income beneficiary") is entitled to receive the income from the trust assets for the next 10 years, at which time the trust will terminate and another individual (the "remainderman") will be entitled to receive the assets. If either the income beneficiary or the remainderman expatriates, a value would need to be placed on their respective interests, and the expatriate would be subject to tax on this value. It is unclear in this context what value would be placed on a nontransferable interest in a trust; for example, a "spendthrift" trust that prohibits the trust beneficiary from assigning or transferring the trust interest. If nontransferable interests were to be valued at zero (because they cannot be sold), they would not be taxed under the proposal, thus rendering the proposal inapplicable with respect to such interests. An additional issue is raised by the fact that the trust instrument is not likely to provide the beneficiaries with access to the trust assets in order to pay the tax. Therefore, in many cases, the resulting tax liability could exceed the assets available to the beneficiary to pay the tax. (This issue is discussed in further detail in Part V.H., below.)

A beneficiary's interest in a trust would be determined on the basis of all facts and circumstances. These include the terms of the trust instrument itself, any letter of wishes or similar document, historical patterns of trust distributions, the role of any trust protector or similar advisor, and anything else of relevance. Under the Administration proposal, the Treasury Department would be expected to issue regulations providing guidance as to the determination of trust interests for purposes of the expatriation tax, and such regulations would be expected to disregard de minimis interests in trusts, such as an interest of less than a certain percentage of the trust as determined on an actuarial basis, or a contingent remainder interest that has less than a certain likelihood of occurrence. In the event that any beneficiaries' interests in the trust could not be determined on the basis of the facts and circumstances, the beneficiary with the closest degree of family relationship to the settlor would be presumed to hold the remaining interests in the trust. The beneficiaries would be required to disclose on their respective tax returns the methodology used to determine that beneficiary's interest in the trust, and whether that beneficiary knows (or has reason to know) that any other beneficiary of the trust uses a different method.

For purposes of this provision, grantor trusts would continue to be treated as under present law—the grantor of the trust would be treated as the owner of the trust assets for tax purposes. Therefore, a grantor who expatriates would be treated as selling the assets held by the trust for purposes of computing the tax on expatriation. Correspondingly, a beneficiary of a grantor trust who is not treated as an owner of the trust (or any portion thereof) under the grantor trust rules would not be considered to hold an interest in the trust for purposes of the expatriation tax.

Date of relinquishment of citizenship

Under the Administration proposal, a U.S. citizen would be treated as having relinquished his citizenship on the date that the State Department issues a certificate of loss of nationality ("CLN"), even though the individual may have ceased to be a U.S. citizen at a substantially earlier date. (See Part IV.B. for further discussion of this issue.) In cases where a naturalized U.S. citizen has his or her naturalization revoked (e.g., where the naturalization was obtained illegally, through the concealment of a material fact, or by willful misrepresentation), the individual would be treated as relinquishing citizenship on the date that a U.S. court cancels the certificate of naturalization, even though, for all other purposes, the individual would not be considered to have ever been a U.S. citizen. These new definitions of when citizenship is deemed to be relinquished for tax purposes would also apply in determining when an expatriating individual ceases to be taxed as a U.S. citizen. Under the Administration proposal, an expatriating individual would be subject to U.S. tax as a citizen of the United States until a CLN is issued or a certificate of naturalization is revoked, regardless of when citizenship has actually been lost through the commission of an expatriating act.[71]

Long-term residents who terminate their U.S. residency

The tax on expatriation would apply to certain "long-term residents" who terminate their residency in the United States. A long-term resident would be any individual who has been a lawful permanent resident of the United States (i.e., a "green card" holder) in at least 10 of the prior 15 taxable years.[72] For this purpose, any year in which the individual was taxed as a resident of another country under a treaty tie-breaker rule would not be considered.[73] The proposal would not apply to individuals who were treated as U.S. residents under the "substantial presence" test, regardless of the amount of time the individual was present in the United States.

Solely for purposes of this provision, a special election would permit long-term residents to determine the tax basis of certain assets using their fair market value at the time the individual became a U.S. resident, rather than their historical cost. The election, if made, would apply to all assets within the scope of the proposal that were held on the date the individual first became a U.S. resident and the fair market value would be determined as of such date.

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[71] As drafted, there is some uncertainty as to how the Administration proposal would affect an individual who had committed an expatriating act prior to February 6, 1995, but who *never* applies for a CLN. To the extent the State Department eventually does issue a CLN with respect to the individual (whether upon the State Department's initiative or upon the individual's request), the individual clearly would be covered by the new provisions.

[72] If a long-term resident surrenders his green card, such a person may still be treated as a resident for U.S. income tax purposes if he has a "substantial presence" within the United States. (See sec. 7701(b)(3).) The proposal would not apply so long as such a person continues to be treated as a tax resident under the substantial-presence test.

[73] Most treaties include "tie-breaker" rules for determining the residency of an individual who would otherwise be considered to be a resident of both the U.S. and the treaty partner under the internal laws of each country. In general, these tie-breaker rules provide that an individual will be taxed as a resident of only one country, based on factors such as the country in which the individual has a permanent home or closer personal and economic ties. (See Part II.A.1.a. for a more detailed discussion of the U.S. residence and tie-breaker rules.)

A long-term resident who terminates his or her U.S. residency would be subject to the proposal at the time the individual ceases to be taxed as a resident of the United States (as determined under present law).

Other special rules

The tax on expatriation generally would apply notwithstanding other provisions of the Code. For example, gain that would be eligible for nonrecognition treatment if the property were actually sold would be treated as recognized for purposes of the tax on expatriation. Also, the exclusions from gross income generally provided to bona fide residents of U.S. possessions or commonwealths (e.g., secs. 931 and 933 of the Code) would not be applicable for purposes of calculating the expatriation tax.[74]

Other special rules of the Code would affect the characterization of amounts treated as realized under the expatriation tax. For example, in the case of stock in a foreign corporation that was a controlled foreign corporation at any time during the five-year period ending on the date of the deemed sale, the gain recognized on the deemed sale would be included in the shareholder's income as a dividend to the extent of certain earnings of the foreign corporation.[75]

Under the Administration proposal, any period during which recognition of income or gain generally is deferred would terminate on the date of the relinquishment, causing any deferred U.S. tax to become due and payable. For example, where an individual has disposed of certain property qualifying for deferral conditioned on the purchase of certain replacement property (e.g., property that qualifies for like-kind exchange treatment under sec. 1031 or that qualifies as a principal residence under sec. 1034), but has not yet acquired the replacement property, the relevant period to acquire any replacement property would be deemed to terminate and the individual would be taxed on the gain from the original sale.

Under the Administration proposal, the present-law provisions with respect to individuals who expatriate with a principal purpose of avoiding tax (sec. 877) and certain aliens who have a break in residency status (sec. 7701(b)(10)) would not apply to any individual who is subject to the new expatriation tax provisions. The special estate and gift tax provisions with respect to individuals who expatriate with a principal purpose of avoiding tax (secs. 2107 and 2501(a)(3)), however, would continue to apply.

The Administration proposal authorizes the Treasury Department to issue regulations necessary to carry out the purposes of the provision.

Effective Date

The Administration proposal would be effective for U.S. citizens who obtain a certificate of loss of nationality, or have a certificate

[74] Native-born residents of U.S. territories and possessions are citizens of the United States, thus it was not intended that the provision be "mirrored" for application in the U.S. territories and possessions that employ the mirror code. However, a rule could be provided to extend the Administration proposal to long-term residents of U.S. territories or possessions who are not citizens of the United States.

[75] See section 1248.

of naturalization cancelled, on or after February 6, 1995 (regardless of when the individual actually lost his or her U.S. citizenship), and for long-term residents who terminate their U.S. residency on or after February 6, 1995. Present law would continue to apply to U.S. citizens who obtained a certificate of loss of nationality prior to February 6, 1995, and to long-term residents who terminated their residency prior to February 6, 1995.

B. Senate Amendment to H.R. 831

Description of Provision

In general

The Senate amendment to H.R. 831 ("the Senate bill") adopted a modified version of the Administration proposal with respect to the taxation of U.S. citizens and residents who relinquish their citizenship or residency.[76] The Senate bill modified the Administration proposal in several ways. First, the Senate bill applies the expatriation tax only to U.S. citizens who relinquish their U.S. citizenship, not to long-term resident aliens who terminate their U.S. residency. Second, the Senate bill modifies the date when an expatriating citizen is treated as relinquishing U.S. citizenship, such that most expatriating citizens are treated as relinquishing their citizenship at an earlier date than under the Administration proposal. The Senate bill also makes some technical modifications to the Administration proposal, including a provision to prevent double taxation in the case of certain property that remains subject to U.S. tax jurisdiction.

Property taken into account; Interests in trusts

The types of property taken into account in determining the tax liability of an expatriate under the Senate bill generally are the same as under the Administration proposal. The rules with respect to interests in trusts, however, are modified in the Senate bill. Under the Administration proposal, an individual holding an interest in a trust would be deemed to have sold that trust interest immediately prior to expatriation. Under the Senate bill, a beneficiary's interest in a trust would be determined in the same manner as under the Administration proposal. However, a trust beneficiary would be deemed to be the sole beneficiary of a separate trust consisting of the assets allocable to his share of the trust, in accordance with his interest in the trust. The separate trust would be treated as selling its assets for fair market value immediately before the beneficiary relinquishes his citizenship, and distributing all resulting income and corpus to the beneficiary. The beneficiary would be treated as subsequently recontributing the assets to the trust. Consequently, the separate trust's basis in the assets would be stepped up and all assets held by the separate trust would be treated as corpus. The Senate bill also adds a constructive ownership rule with respect to a trust beneficiary that is a corporation,

[76] The Senate amendment to H.R. 831 was not included in the conference agreement on H.R. 831, nor as the bill was enacted (P.L. 104-7, signed by the President on April 11, 1995). Instead, the enacted legislation included a requirement that the staff of the Joint Committee on Taxation complete this study of the expatriation tax issues by June 1, 1995.

partnership, trust or estate. In such cases, the shareholders, partners or beneficiaries of the entity that is the trust beneficiary would be deemed to be the direct beneficiaries of the trust for purposes of applying these provisions.

Date of relinquishment of citizenship

Under the Administration proposal, an individual is deemed to have lost U.S. citizenship on the date that a certificate of loss of nationality ("CLN") is issued by the State Department or a certificate of naturalization is canceled by a court. The Senate bill would modify these rules to treat an individual as relinquishing his citizenship on an earlier date, specifically, the date that the individual first presents himself to a diplomatic or consular officer of the United States as having voluntarily relinquished citizenship through the performance of an expatriating act.[77] Under the Senate bill, a U.S. citizen who relinquishes citizenship by formally renouncing his or her U.S. nationality before a diplomatic or consular officer of the United States[78] would be treated as having relinquished citizenship on that date, provided that the renunciation is later confirmed by the issuance of a CLN. (For these individuals, the date on which the individual is deemed to lose his citizenship for tax purposes is the same as the date on which the individual has actually lost his citizenship under existing U.S. law.) A U.S. citizen who furnishes to the State Department a signed statement of voluntary relinquishment of U.S. nationality confirming the performance of an expatriating act[79] would be treated as having relinquished his citizenship on the date the statement is so furnished (regardless of when the expatriating act was performed causing the actual loss of U.S. citizenship to occur), provided that the voluntary relinquishment is later confirmed by the issuance of a CLN. If neither of these circumstances exist, the individual would be treated as having relinquished citizenship on the date the CLN is issued, or a certificate of naturalization is cancelled, regardless of when the individual actually lost U.S. citizenship.[80]

Under the Senate bill, it is anticipated that an individual who has formally renounced his or her citizenship or furnished a signed statement of voluntary relinquishment (but has not received a CLN from the State Department by the date on which he is required to file a tax return covering the year of expatriation) would file his U.S. tax return as if he or she had expatriated.

Administrative requirements

Under the Senate bill, an expatriating individual subject to the expatriation tax would be required to pay a tentative tax equal to the amount of tax that would have been due for a hypothetical short tax year ending on the date the individual is deemed to have

[77] See Part IV.B. for further discussion of this issue.

[78] Section 349(a)(5) of the Immigration and Nationality Act (8 U.S.C. section 1481(a)(5)) provides for the relinquishment of citizenship through renunciation.

[79] The Senate bill would apply to any expatriating act specified in section 349(a)(1) - (4) of the Immigration and Nationality Act (8 U.S.C. section 1481(a)(1) - (4)).

[80] As under the Administration proposal, there is some uncertainty as to how the Senate bill would affect an individual who committed an expatriating act prior to February 6, 1995, but who never executed a formal renunciation of citizenship, signed a statement of voluntary relinquishment, or obtained a CLN.

relinquished his citizenship.[81] The tentative tax would be due on the 90th day after the date of the deemed relinquishment. The individual also would be required to file a tax return for the entire tax year during which he expatriated reporting all of his taxable income for the year, including gain attributable to the deemed sale of assets on the date of expatriation. The individual's U.S. Federal income tax liability for such year would be reduced by the tentative tax paid with the filing of the hypothetical short-year return.

The Senate bill provides that the time for the payment of the tax on expatriation could be extended for up to 10 years at the request of the taxpayer, using the rules applicable to estate tax payments provided by section 6161.[82] It is expected that a taxpayer's interest in non-liquid assets, such as an interest in a closely-held business interest (as defined in sec. 6166(b)), would be taken into account in determining reasonable cause for the extension of time to pay the tax on expatriation.

If the expatriating individual and the Treasury Department agree to defer payment of the tax on expatriation for a period that extends beyond the filing date for the full-year tax return for the year of expatriation, the individual would not be required to pay a tentative tax. The entire gain on the deemed sale of property on the date of expatriation would be included in the individual's full-year tax return for that year, and would be paid in accordance with the provisions of the deferred-tax agreement under section 6161. It is expected that the Treasury Department would not agree to defer payment of the tax on expatriation unless the taxpayer provides adequate assurance that all amounts due under the agreement will be paid.

Other special rules

The "other special rules" included in the Administration proposal are also included in the Senate bill. In addition, the Senate bill clarifies that any portions of a gain that would qualify for the specific income exclusions of sections 101-137 (Subtitle A, Chapter 1B, Part III) of the Code would not be treated as realized under the provisions of the expatriation tax. In addition to giving the Treasury Department general regulatory authority, the Senate bill also provides specific authority to issue regulations to permit a taxpayer to allocate the taxable gain on the deemed sale (net of any applicable exclusion) to the basis of the assets taxed under this provision, thereby preventing double taxation if the assets remain subject to U.S. tax jurisdiction.

[81] Thus, the tentative tax is based on all the income, gain, deductions, loss and credits of the individual for the year through the date of the deemed relinquishment, including amounts realized from the deemed sale of property. The tentative tax is deemed to be imposed immediately before the individual is deemed to have relinquished citizenship.

[82] Under these rules, if reasonable cause is shown, the IRS may grant an extension for the payment of estate taxes for a reasonable period, not to exceed 10 years, from the date the payment is due. If such an extension is granted, interest continues to run, but there would be no penalties imposed for late payment. Section 6166 further provides that the estate tax attributable to certain closely-held business interests may be paid over a 14-year period. These rules are discussed more fully in Part II.A.2.c., above.

Effective Date

The provision in the Senate bill would be effective for U.S. citizens who are deemed to have relinquished their U.S. citizenship on or after February 6, 1995 (i.e., individuals who first made their loss of U.S. citizenship known to a U.S. government or consular official after this date). The tentative tax would not be required to be paid until 90 days after the date of enactment of the bill.

Present law would continue to apply to U.S. citizens who are deemed to have relinquished their citizenship prior to February 6, 1995 (i.e., individuals who first made their loss of U.S. citizenship known to a U.S. government or consular official prior to this date).

C. Gephardt Proposal

Representative Gephardt included a variation of the Administration proposal in a motion to recommit H.R. 1215 (the "Tax Fairness and Deficit Reduction Act of 1995") to the Committee on Ways and Means with instructions to report the bill back to the House with certain amendments.[83] The Gephardt amendment differed from the Administration proposal only with respect to the effective date. The Gephardt amendment would have changed the effective date of the Administration proposal to October 1, 1996. The Gephardt amendment was defeated by a vote of 168-265.

D. Modified Bills Introduced by Senator Moynihan (S. 700) and Representative Gibbons (H.R. 1535)

Senator Moynihan introduced S. 700 on April 6, 1995. Representative Gibbons introduced an identical bill, H.R. 1535, on May 2, 1995. These bills (the "modified bills") make several changes to the expatriation proposal included in the Senate amendment to H.R. 831.

Long-term residents who terminate their U.S. residency

The modified bills would apply the tax on expatriation to "long-term residents" who terminate their residency in a manner similar to the provision included in the Administration proposal. A long-term resident would be an individual who has been a lawful permanent resident of the United States (i.e., a green-card holder) in at least 8 of the prior 15 taxable years. (In contrast, the Administration proposal defines a long-term resident as one who had been a lawful permanent resident for at least 10 of the prior 15 taxable years.) As under the Administration proposal, for purposes of satisfying the 8-year threshold, taxable years for which an individual was a resident of another country under a treaty tie-breaker rule would be disregarded. The tax on expatriation would apply to a long-term resident when (1) the individual is no longer treated as a lawful permanent resident of the United States as that term is defined in section 7701(b)(6), or (2) the individual is treated as a resident of another country under the tie-breaking provisions of a U.S. income tax treaty (and the individual does not elect to waive treaty benefits). Long-term residents who terminate their residency

[83] See, 141 Cong. Rec. H4311 (April 5, 1995).

status would be treated as "expatriates" for purposes of applying the tax on expatriation.

Fair market value basis adjustment

Under the modified bills, a nonresident alien individual who becomes a citizen or resident of the United States would be required to utilize a fair market value basis, rather than an historical cost basis, in determining any subsequent gain or loss on the disposition of any property held on the date the individual became a U.S. citizen or resident. The fair market value basis would be equal to the fair market value of the property on the earlier of: (1) the date the individual first became a U.S. citizen or resident, or (2) the date the property first became subject to U.S. tax because it was used in a U.S. trade or business or was a U.S. real property interest. The fair market value basis would apply for all purposes of computing gain or loss on actual or deemed dispositions (not just the tax on expatriation), but would not apply for purposes of computing depreciation. This provision would apply only to individuals; it would not apply to a foreign trust that becomes a domestic trust.

An individual could make an irrevocable election not to have the fair market value provision apply to any specified property, solely for purposes of determining gain with respect to that property. Thus, for any property with respect to which the election is made, the taxpayer's gain upon disposition would be determined based on the historical cost of the property. This election would not be available to claim a loss on the disposition of the property. These rules could produce anomalous results.[84]

This provision would apply to any deemed dispositions of property resulting from expatriations occurring on or after February 6, 1995, and any actual dispositions of property after the enactment date, regardless of when the property was acquired.

Election for expatriate to be treated as a U.S. citizen

The modified bills allow an expatriating individual to irrevocably elect, on an asset-by-asset basis, to continue to be taxed as a U.S. citizen with respect to any assets specified by the taxpayer. The expatriate, therefore, would continue to pay U.S. income taxes following expatriation on any income generated by the asset and on any gain realized on the disposition of the asset, as well as any excise tax imposed with respect to the asset (see, e.g., sec. 1491). In addition, the asset would continue to be subject to U.S. gift, estate, and generation-skipping transfer taxes. However, the amount of any transfer tax so imposed would be limited to the amount of income tax that would have been due if the property had been sold for its fair market value immediately before the transfer or death, taking into account any remaining portion of the expatriate's $600,000 exclusion. To make this election, the taxpayer would be required to

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[84] It is unclear what the result would be in certain cases. For example, assume that an individual purchased a nondepreciable asset for $100, and that when the individual first became a U.S. resident, the fair market value of the asset was $50. If the asset is later sold for $90, the individual might be required to recognize a gain of $40 under the bill, since the historical cost election cannot be used to claim a loss. Alternatively, the individual might not be required to recognize any gain or loss. It is clear under the bill that the individual would not be entitled to claim his or her actual realized loss of $10. If the asset is instead sold for $101, however, it is clear that the individual could make the historical cost election and recognize a gain of only $1, rather than $51.

waive treaty benefits with respect to the specified assets. If an individual elects to be subject to U.S. taxes after expatriation with respect to certain assets, a double taxation issue could arise if the expatriate's new country of residence also imposes a tax on income realized from those assets; however, in most cases there will be no double taxation because the individual would be entitled to take a foreign tax credit with respect to the taxes imposed by the nonsource country. (The double taxation issue is further discussed in Part V.F., below.) An expatriating individual would be required to provide security to ensure payment of the tax under this election in such form, manner, and amount as the Secretary would require.

Interests in trusts

In general, the modified bills use the same rules with respect to determining interests in trusts as those provided in the Senate amendment to H.R. 831. However, the bills would modify the special rule for determining the ownership of an interest in a trust where ownership cannot be determined based on the general facts and circumstances test. In such cases, any remaining interests would be allocated to the grantor, if the grantor is a beneficiary of the trust. Otherwise, the ownership of the trust interest would be based on the rules of intestate succession. (The Administration proposal and the Senate bill provided that, in cases where the beneficiaries' interests could not be determined based on the facts and circumstances test, they would be determined based on the beneficiary's degree of family relationship to the settlor.)

Other special rules

Relinquishment of citizenship by certain minors

The tax on expatriation would not apply to an individual who relinquishes U.S. citizenship before attaining the age of 18-1/2 years, if the individual lived in the United States for less than five taxable years (as defined under the substantial presence test of sec. 7701(b)(1)(A)(ii)) before the date of relinquishment.

Deferral of tax on expatriation where estate taxes would be deferred

The modified bills provide that the time for the payment of the tax on expatriation could be deferred to the same extent, and in the same manner, as any estate taxes may be deferred under the present-law provisions of section 6161 (without regard to the 10-year limitation of that section). In addition, the tax on expatriation could be deferred on interests in closely-held businesses as provided in present law section 6166. The tax on expatriation could also be deferred for reversionary or remainder interests in property as provided in section 6153. Payment of tax liability could also be deferred under section 6159 to facilitate the collection of tax liabilities.

Method of providing security

If a taxpayer is required to provide security under this section, the Secretary could consider the rules with respect to qualified domestic trusts set forth in section 2056A (requiring that assets be contributed to a trust with a responsible U.S. trustee). If an expatriating individual is a beneficiary of a trust, and the beneficiary elects to defer payment of the tax on expatriation with respect to the trust interest, a U.S. trustee of that trust would be required to provide security if the beneficiary provides actual notice of such requirement to the domestic trustee.

Coordination with estate and gift tax imposed upon certain expatriations

The tax on expatriation would be allowed as a credit against any U.S. estate or gift taxes subsequently imposed on the same property solely by reason of the special rules imposing an estate or gift tax on property transferred by an individual who relinquished his U.S. citizenship with a principal purpose of avoiding U.S. taxes within 10 years prior to the transfer (i.e., the tax imposed under present-law sections 2107 and 2501(a)(3)).

"Sailing permits"

The modified bills would repeal the current "sailing permit" requirement of section 6851(d).[85]

Effective Date

The effective dates of the modified bills are identical to the Senate bill. The provisions in the modified bills would be effective for U.S. citizens who are deemed to have relinquished their U.S. citizenship on or after February 6, 1995 (i.e., individuals who first made their loss of U.S. citizenship known to a U.S. government or consular official after this date). The tentative tax would not be required to be paid until 90 days after the date of enactment of the bill.

Present law would continue to apply to U.S. citizens who are deemed to have relinquished their citizenship prior to February 6, 1995 (i.e., individuals who first made their loss of U.S. citizenship known to a U.S. government or consular official prior to this date).

The fair market value basis election would apply to any deemed dispositions of property resulting from expatriations occurring on or after February 6, 1995, and any actual dispositions of property after the enactment date, regardless of when the property was acquired.

[85] Although the statutory language of the modified bills appears to repeal the sailing permit requirement, the description of the bills included in the floor statement of Senator Moynihan upon introduction indicates that the intent is to modify the sailing permit requirement in the case of any citizen or resident alien who becomes a nonresident of the United States. See, 141 Cong. Rec. S5446 (April 6, 1995).

IV. GENERAL ISSUES RAISED BY THE PROPOSALS TO MODIFY THE TAX TREATMENT OF EXPATRIATION

In examining the Administration proposal and various alternatives that have been proposed, the Joint Committee staff attempted to determine a policy framework for analyzing each proposal. These overall policy issues must be considered in determining the extent to which any proposed legislation will be able to meet its goals, and will also provide a basis for analyzing the 11 specific issues (set forth in Part V., below) that the Joint Committee staff was instructed to examine. These overall policy issues are outlined below.

A. Scope of the Proposals

An initial issue to be evaluated is the underlying reason for imposing a tax, which would not otherwise be imposed, on a U.S. citizen who relinquishes citizenship or a long-term U.S. resident who relinquishes residence. For example, when section 877 was enacted in 1966, the Congress stated its concern that the elimination of progressive income tax rates on the income of nonresident aliens that is not effectively connected with a U.S. trade or business might encourage some U.S. citizens to surrender their U.S. citizenship and move abroad.[86] Similarly, the Congress expressed concern that the wealth of an expatriate that generally would have been accumulated in the United States could be outside the reach of U.S. estate tax if a citizen relinquished U.S. citizenship.

Two reasons have been articulated for imposing the tax proposed by the Administration on U.S. citizens and long-term residents who relinquish U.S. citizenship or residence. First, the Administration stated in a Treasury Department press release issued February 6, 1995, that a few dozen U.S. citizens are relinquishing their citizenship each year to avoid paying tax on the appreciation in value that their assets accumulated while the individuals "enjoyed the privileges and protection of U.S. citizenship."[87] The press release further stated that the Clinton Administration was proposing legislation aimed at "stopping U.S. multimillionaires from escaping taxes by abandoning their citizenship or by hiding their assets in foreign tax havens." In addition, in testimony before the Senate Committee on Finance on March 21, 1995, Assistant Secretary of the Treasury for Tax Policy Leslie B. Samuels stated that "Treasury estimates that approximately two dozen very wealthy taxpayers per year with substantial unrealized gains would be subject to the proposed rules."[88] Under this theory, U.S. citizens and residents should pay a price for having enjoyed the benefits of U.S. citizenship or the benefits of having assets located in the United States. It is not clear what the benefits of U.S. citizenship are for purposes of this rationale. For example, some might think that the

[86] See, *Foreign Investors Tax Act of 1966; Presidential Election Campaign Fund Act; and Other Amendments*, Senate Finance Committee Report, Report No. 1707, October 11, 1966.

[87] Department of the Treasury, Treasury News, "Clinton Offers Plan to Curb Offshore Tax Avoidance," RR-54, February 6, 1995. The Joint Committee staff was unable to find evidence that quantified the extent to which U.S. citizens are relinquishing citizenship for tax avoidance purposes.

[88] Statement of Leslie B. Samuels, Assistant Secretary (Tax Policy), Department of the Treasury, Before the Subcommittee on Taxation and Internal Revenue Oversight, Committee on Finance, United States Senate, March 21, 1995.

benefit of being able to travel on a U.S. passport (and being able to enjoy the protection of a U.S. embassy outside the United States) would be a sufficient benefit of U.S. citizenship; others might think that the benefits of U.S. citizenship are primarily the benefits of the services (such as health care advances and modern public works) that are enjoyed by those living in the United States.

A second rationale that has been articulated for imposing a tax on relinquishment of U.S. citizenship or residence is that individuals who relinquish citizenship or residence for tax avoidance purposes are, in fact, continuing to maintain significant ties with the United States, including spending significant periods of time in the United States.[89] Thus, the argument is made that such individuals are not really relinquishing their ties to the United States and, therefore, should continue to be taxed as U.S. citizens or residents. Under this argument, the tax imposed by the Administration proposal is a proxy for the tax that would have been owed had the individual continued to be a U.S. citizen or resident (see the specific discussion about the lifetime tax burdens under the Administration proposal and existing law, in Part IV.C., below).

In order to determine whether either of the two articulated theories should be applied, it is necessary to consider the classes of individuals to whom a proposal such as the Administration's proposed tax might apply. The Joint Committee staff has identified the following classes of individuals to whom the Administration proposal (and other similar proposals) might be applied:

(1) U.S. citizens who were born in the United States, accumulated their wealth in the United States, and who are relinquishing citizenship, but who plan to maintain significant ongoing ties to the United States;
(2) U.S. citizens who were born in the United States, accumulated their wealth in the United States, and who are relinquishing citizenship with the intent of breaking all ties with the United States solely for non-tax reasons;
(3) U.S. citizens who have no significant ties to the United States (e.g., were not born in the United States or who have not lived in the United States for a substantial period of time) and who do not have assets in the United States;[90]

[89] See, for example, Statement of Senator Daniel Patrick Moynihan (D-NY) upon introduction of legislation affecting the taxation of expatriates, 141 Cong. Rec. S5443 (April 6, 1995). In this statement, Senator Moynihan argues "even after renunciation, these individuals can maintain substantial connections with the United States, such as keeping a residence and residing in the United States for up to 120 days a year without incurring U.S. tax obligations. Indeed, reports indicate that certain wealthy individuals have renounced their U.S. citizenship and avoided their tax obligations while still maintaining their families and homes in the United States, being careful merely to avoid being present in this country for more than 120 days each year." In addition, an example in the February 6, 1995, Treasury Department Press Release describes an individual who relinquishes U.S. citizenship but continues to carry a U.S. passport and driver's license.

[90] Included in this class are individuals who are U.S. citizens, but who do not know that they are. Some individuals may not realize that they are U.S. citizens if they were born in the United States to foreign parents and other individuals may not realize that they are U.S. citizens merely because one of their parents is a U.S. citizen who satisfied certain residence requirements. For example, as indicated above, in the course of research for this study, the Joint Committee staff became aware of an individual who was born in the United States to foreign parents, but who had lived outside the United States all of his life. This individual did not realize that his birth within the United States had conferred citizenship status on him until an Immigration and Naturalization Service officer questioned the right of the individual to travel on a foreign

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(4) U.S. residents who came here from another country, accumulated their wealth here, and are returning to their country of birth (or going to another country); and

(5) U.S. residents who came here from another country where they previously accumulated their wealth and are returning to their country of birth (or going to another country).

Section 877 of present law would appear to be intended primarily to impact individuals in category (1), those who most likely are relinquishing their U.S. citizenship for tax avoidance purposes. Present-law section 877 excepts from its application loss of citizenship under the Immigration and Nationality Act ("INA") for certain causes. Although these exceptions are all obsolete because the underlying INA provisions relating to loss of citizenship have been modified to exclude these causes, the fact that the Congress included these exceptions suggests that the original scope of section 877 was not intended to apply to all cases of loss of citizenship.

The Administration proposal would equally affect individuals in all of the enumerated categories without regard to the reason that the individual is relinquishing U.S. citizenship or residence. At the same time, the Administration proposal may have little or no impact on individuals with newly-inherited wealth who expatriate specifically for tax avoidance reasons, because the inherited assets would have received a basis step up to fair market value upon the decedent's death, and thus would have little or no unrealized appreciation.

In determining whether legislative action is necessary or appropriate, the Congress should determine the extent to which it is appropriate to impose an extraordinary tax regime upon individuals in any of the categories listed above. For example, although present law imposes tax on U.S. citizens on their worldwide income, one should consider whether it is appropriate to impose an extraordinary tax regime on a U.S. citizen outlined in category (3) (i.e., a citizen who has always had minimal ties to the United States) who decides to relinquish U.S. citizenship.

In analyzing any of the particular proposals to impose tax on expatriation (or loss of long-term U.S. residence), it is appropriate to consider the following issues:

(1) What is the underlying rationale for the proposal? In other words, is the proposal intended to collect U.S. taxes that would otherwise be paid by individuals who do not really sever their ties with the United States? If so, is it intended to collect the equivalent amount of income taxes, estate taxes, or both? Or is the proposal intended to impose a tax to recoup the benefits of U.S. citizenship or residence?

(2) What is the appropriate class of individuals to whom the proposal should be applied given the rationale for the proposal?

(3) How can the proposal be structured so as not to impose a new tax regime retroactively on individuals who structured their holdings of assets in reliance upon present law?

(4) Does the proposal impose a tax that is fair in relation to the goals of the proposal? Is the tax imposed consistent with

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passport given that the individual listed a place of birth within the United States. That individual is now contemplating relinquishing his U.S. citizenship.

the U.S. normative system of taxation or is it an extraordinary tax? If it is an extraordinary tax, are there alternatives that would be more consistent with the way in which the United States taxes its citizens and residents?

These issues reflect the underlying concern that the tax imposed on individuals who expatriate should be fair relative to the tax treatment of U.S. citizens and that it should not be excessive relative to the goal for imposing the tax.

If the goal of a proposal is to collect U.S. taxes with respect to individuals who do not really sever their ties with the United States, then it may not be appropriate to impose tax on individuals who clearly maintain no ongoing ties. For example, in the case of an individual who has never lived in the United States and acquired U.S. citizenship through birth, it may be inconsistent with the goal of a proposal to impose tax upon that individual's expatriation.

If the goal of a proposal is to impose tax to recoup the benefits of U.S. citizenship or residence (or the benefits of protection of assets within U.S. borders), then it may be unfair to impose tax on long-term U.S residents with respect to assets they acquired prior to becoming a resident of the United States. It is necessary to define the benefits of U.S. citizenship in order to determine the appropriate scope of the proposal. For example, a U.S. citizen might have been born outside the United States and may have never lived in nor held assets in the United States. In the case of such an individual, it is necessary to determine what benefits of U.S. citizenship the individual has had in order to determine whether it is appropriate to impose a tax upon expatriation.

Similarly, fairness issues suggest that it is appropriate to consider not only the amount of tax in relation to the underlying goals for imposing the tax, but that it is also appropriate to consider whether the tax imposed can be viewed as a retroactive tax with respect to assets acquired long before the tax is imposed. For example, some have pointed out that the Administration proposal may have a cliff effect with respect to long-term residents because someone who gives up residence just prior to becoming a long-term resident will pay no tax, but an individual who gives up residence just after becoming a long-term resident would be subject to tax with respect to the unrealized gains for the entire period of residence. Of course, this effect is not dissimilar to present law under which an individual who satisfies the "substantial presence" test by being in the United States for a period of 183 days or more (as computed under sec. 7701(b)(3)(A)(ii)) during the three-year period generally is subject to tax as a resident of the United States (i.e., would be subject to U.S. tax on his or her worldwide income), whereas an individual who is present in the United States for 182 days during the same period would only be subject to tax on U.S. source income.

With respect to the effective date of the Administration proposal, there may be long-term residents of the United States who would not have become long-term U.S. residents if they knew they would be subject to tax upon relinquishing U.S. residence; it is important to consider whether imposition of the tax on relinquishing residence is appropriate in such cases.

B. Date of Loss of Citizenship

All of the proposals create a new tax definition of the date on which citizenship is lost. The definitions of each proposal vary slightly, but all of the proposals would deem the loss of citizenship to occur later than is actually the case under the Immigration and Nationality Act. The new tax definition of the date of loss of citizenship set forth in the proposals would apply for only two purposes: (1) to determine the date on which the new expatriation tax is imposed, and (2) to determine the date on which an individual's continuing obligation to pay taxes as a U.S. citizen ceases. The proposals would not change the law applicable to loss of citizenship for any other purpose. The existence of two separate definitions of when citizenship is lost for various purposes would not only be confusing, but there could be serious legal and even constitutional problems in taxing an individual as a U.S. citizen long after he or she ceases to have the rights and responsibilities of a U.S. citizen for all other purposes.

Under existing law, a U.S. citizen may voluntarily give up his or her U.S. citizenship at any time by performing one of a number of "expatriating acts" with the intention of relinquishing U.S. nationality.[91] The most common of these acts are (1) to formally renounce one's nationality before a U.S. diplomatic or consular officer in a foreign country (by executing an Oath of Renunciation), or (2) to become naturalized in another country. (See Part II.B.1. for a more comprehensive discussion of present law.) An individual generally is considered to have lost his citizenship on the date that an expatriating act is committed, even though the loss may not be documented until a later date. When an individual acknowledges to a consular officer that an expatriating act was taken with the requisite intent, the consular officer prepares a certificate of loss of nationality ("CLN"). Once the CLN has been approved by the State Department, a copy of the CLN is issued to the affected individual. The date upon which the CLN is approved is not the effective date for loss of citizenship. The loss of citizenship is effective as of the date of the expatriating act.

The Administration proposal would consider an individual to have lost U.S. citizenship on the date that a CLN is issued to the individual.[92] The other proposals would consider an individual to have lost citizenship on the date that the individual first informs a consular official of his or her intent to relinquish citizenship,[93] regardless of when the expatriating act occurred.[94] In some cases, an individual may have committed an expatriating act many years before the individual notifies a consular officer that such an act has

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[91] 8 U.S.C. section 1481.

[92] The proposals also include a special rule for naturalized U.S. citizens whose citizenship is involuntarily revoked because the certificate of naturalization was illegally procured, or was procured by concealment of a material fact or by willful misrepresentation. Because such cases are relatively rare, they will not be discussed here.

[93] The State Department does not currently maintain in its computerized records the date on which an individual first informs a consular official of his intent to relinquish citizenship.

[94] Because of a technical flaw in the bills, an individual who commits an expatriating act, but never informs a consular officer of his or her intent to relinquish citizenship (i.e., by formally renouncing U.S. nationality or by furnishing a signed statement of voluntary relinquishment), and who never obtains a CLN, would never be subject to the proposed expatriation tax. The individual would, however, continue to be subject to taxation as a U.S. citizen, although he or she may be able to be successfully challenge the imposition of such taxes in court. (See related discussion, below.)

been taken. (See Appendix H for data received from the State Department on recent expatriations.) Thus, under all of these proposals, an individual could be subject to the expatriation tax at a date long after he or she actually ceased being a U.S. citizen under applicable Federal law (i.e., the Immigration and Nationality Act). In fact, any individual who ceased being a U.S. citizen as a result of committing an expatriating act prior to February 6, 1995 (the effective date of the proposals), but who did not yet declare such action to a U.S. consular officer, would be subject to the expatriation tax even though the individual was not a U.S. citizen (for tax purposes or any other purpose) on February 6, 1995. The proposals would, therefore, constitute a retroactive change in the law for individuals who had validly expatriated under the law in effect at the time of their expatriation.[95]

In addition, the proposals change the date on which an individual's citizenship is deemed to be terminated for purposes of determining when the individual's continuing obligation to pay U.S. taxes as a U.S. citizen ceases. The proposals add a new Code section, 7701(a)(47), which provides that "[a]n individual shall not cease to be treated as a United States citizen before the date on which the individual's citizenship is treated as relinquished under [the new expatriation tax proposals]." One effect of this language is to retroactively impose a continuing U.S. tax liability on non-U.S. citizens who ceased being U.S. citizens prior to February 6, 1995 (the general effective date of the proposals) if they had not applied for (or obtained) a CLN by that date.

The Treasury Department states that its proposal intentionally changes the definition of when an individual is deemed to lose U.S. citizenship for tax purposes, based on fears that an individual would otherwise be able to manipulate the timing of the loss of citizenship in an attempt to avoid taxation.[96] First, the Treasury Department claims that an individual could commit an expatriating act (such as obtaining a foreign nationality) shortly before receiving a large amount of taxable income, but then wait for some length of time before presenting himself to a consular officer as having relinquished his citizenship, so as to retain the "protections of the U.S. government" for the intervening period. Even under the Administration proposal, an individual could expatriate before receiving a large amount of taxable income and thus avoid being taxed on that income. It is unclear what "protections of the U.S. government" the Treasury Department believes an individual would find valuable enough to make this a cause for concern, particularly since the individual could jeopardize the validity of the expatriation if the individual takes advantage of such protections after committing an expatriating act. Indeed, the Treasury Department states that an important consideration in determining whether an individual in fact intended to renounce citizenship at the time of an expatriating act is the individual's subsequent conduct, and that if an individual continues to act as a citizen after the alleged expatriat-

[95] Some could even argue that the proposals constitute a "retroactive Federal income tax increase" with respect to such individuals, which would not be in order under current House rules. See Rule XXI.5.(d) of the Rules of the House of Representatives.

[96] See, letter dated May 23, 1995, from Leslie B. Samuels, Assistant Secretary of the Treasury (Tax Policy) (included in Appendix G).

ing act, a court could find that the individual did not intend to renounce citizenship. If a large amount of potentially taxable income is at stake, it is unlikely that an individual would risk such taxation in an attempt to retain some unspecified "protections" of the U.S. government for the intervening period of time.

The second reason given by the Treasury Department for establishing a new tax definition for loss of citizenship is based on a concern that individuals might be able to obtain backdated naturalization documents from foreign governments. Although this may be a valid concern, the potential for such abuse must be weighed against the potential confusion and unfairness to all expatriating U.S. citizens that could result from utilizing two separate definitions for determining an individual's loss of U.S. citizenship. A preferable alternative might be to aggressively pursue those cases in which falsified documents are suspected to have been obtained.

Finally, the Treasury Department asserts that there are already situations in which an individual's citizenship status could be different for tax purposes than for State Department purposes. However, all of the examples cited by the Treasury Department (as well as examples found in the Joint Committee staff's research) involved circumstances in which an individual was *not* taxed as a U.S. citizen, even though the individual technically still was a U.S. citizen.[97] In all of these situations, the taxpayer had taken actions believed to have led to a loss of citizenship at the time, but the individual's citizenship was retroactively restored (either because the statute under which citizenship was thought to have been lost was subsequently declared unconstitutional, or because of a subsequent determination that the individual lacked the requisite intent to relinquish citizenship). In these cases, the courts and/or the IRS concluded that it would be inequitable to impose U.S. tax on such individuals for those years in which the individual was denied the protections of the U.S. government (because the individual and/or the U.S. government believed the individual was not a U.S. citizen at the time, notwithstanding the fact that the person was subsequently determined to have actually been a U.S. citizen at the time).[98] If the same rationale is applied to the proposals to change the date on which citizenship is deemed to be lost for tax purposes, courts would likely find it inequitable to impose a new tax on individuals who had validly relinquished their U.S. citizenship under the law in effect at the time they expatriated, because these individuals similarly have been denied the protections of the U.S. government since the time of their expatriation. Indeed, the proposal does not restore their U.S. citizenship and, therefore, does not restore their rights to the protections of the U.S. government afforded its citizens, because the proposal only relates to tax treatment and does not alter provisions of U.S. law governing loss of citizenship. Thus, the cases cited by the Treasury Department as justification

[97] See, e.g., *U.S. v. Rexach*, 558 F.2d 37 (1st Cir. 1976); Rev. Rul. 92-109, 1992-2 C.B. 3.

[98] The rationale for exempting such individuals from their U.S. tax liability is not based on any provision of the Internal Revenue Code or other Federal statute, but rather, is based on the general concept of equitable estoppel. In *Rexach*, the court explained that "[a]lthough estoppel is rarely a proper defense against the government, there are instances [such as these] where it wouldbe unconscionable to allow the government to reverse an earlier position", and thus concluded that the taxpayer could not "be dunned for taxes to support the United States government during the years in which she was denied its protection." 558 F.2d at 43.

for changing the date on which citizenship is lost more appropriately serve to highlight the problems presented by the proposals.

C. Lifetime Tax Liability Under Present Law and the Administration Proposal

Overview

Under either present law or the Administration proposal, the individual who chooses to relinquish his or her U.S. citizenship (or gives up permanent residence status), would be subject to a fundamentally different tax regime than if the individual were to retain U.S. citizenship. It is not possible to conclude whether the individual faces a greater or lesser lifetime tax liability under one tax regime or another.

The Administration proposal would impose a different pattern of tax liability on an individual who relinquishes his or her citizenship than to one who retains U.S. citizenship. As described in Part III.A., the Administration proposal would require payment of income taxes on a deemed recognition of certain accrued gains by an individual who relinquishes his or her citizenship.[99] The individual would then be free of U.S. tax, but would be subject to whatever taxes his or her new country of residence might impose. Had the individual retained U.S. citizenship, he or she would pay tax on the accrued gains, only if realized, and the value of assets would be subject to the U.S. estate tax upon the death of the individual.

As described above in Part II.A.4., under present law, an individual who relinquishes U.S. citizenship, with one of the principal purposes being the avoidance of U.S. taxes, is subject to U.S. income tax on U.S. source income, including any realized capital gains, for 10 years after the loss of citizenship. At the same time, such an individual also would be subject to whatever taxes the new country of residence might impose. Had the individual retained U.S. citizenship, he or she would pay tax on their worldwide income, including any realized capital gains, and the value of assets would be subject to the U.S. estate tax upon the death of the individual, but the individual generally would not be subject to tax in another country as well.

The lifetime tax liability of a citizen who retains U.S. citizenship depends upon the assets accumulated, the income earned, the individual's spending choices (consumption) and taxes on income and estates. Under present law, the lifetime tax liability of an individual who relinquishes U.S. citizenship depends upon assets accumulated, the income earned subsequent to expatriation, the individual's spending choices, U.S. income tax rates, and the new resident country's income and estate tax rates. Under the Administration proposal, the lifetime tax liability of an individual who relinquishes U.S. citizenship would depend upon the accrued gains on any assets accumulated prior to expatriation, the income earned and the assets accumulated subsequent to expatriation, the individual's spending choices, and the new resident country's income and estate tax rates.

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[99] The subsequent discussion will refer to the "Administration proposal," although it would apply equally to the Senate amendment to H.R. 831, S. 700, or H.R. 1535, as each proposal would deem certain accrued capital gains to be recognized for purposes of determining the income tax liability of an individual relinquishing his or her citizenship.

Examples

The following examples illustrate how these different factors interact. For the purpose of these examples, assume that individuals fully comply with both present law and the Administration proposal.[100] Also for ease of exposition, assume that taxes are applied proportionately with no exemptions. Assume the tax rate on capital gains is 28 percent, the tax rate on ordinary income is 39.6 percent, and the estate tax rate is 55 percent. The examples also abstract from potential U.S.-source withholding on certain forms of income and possible relief from double taxation that may or may not be provided. (See Part V.F. for a discussion of treaty provisions for relief from double taxation.)

Example (1): Low-basis assets, low consumption

Assume an individual has $10 million of capital assets in which he has a zero basis. Also, assume the individual will never consume but only reinvest any income the assets might continue to generate and that the assets generate a 10-percent dividend annually. In addition, assume that the individual dies after 20 years.

If the individual retains U.S. citizenship, the individual will pay income taxes of $396,000 in the first year, $419,918 in the second year, $445,281 the third year, etc., growing with the reinvested earnings.[101] After 20 years, the accumulated assets will equal $32.36 million and at death an estate tax liability of $17.8 million would accrue.

If the individual were to relinquish U.S. citizenship with tax avoidance a principal purpose, the individual would be liable for U.S. income taxes for the first 10 years after relinquishment under present law. In addition, the individual would be subject to the taxes of the new country of residence. If those taxes are zero, the individual is better off than if he had not relinquished his citizenship by not having to pay $17.8 million in U.S. estate taxes and the second 10 years of U.S. income taxes. If the new country of residence imposes taxes comparable to those in the United States, the individual is worse off than if he had not relinquished his citizenship for having paid double income taxes for the first 10 years.

If this individual were to relinquish U.S. citizenship and avoidance of taxes were not a principal purpose, emigration to a zero-tax country would make the individual better off by the avoidance of all U.S. taxes. If the individual were to emigrate to a country with taxes comparable to the United States, the individual would pay the same total taxes as if the individual had chosen to retain U.S. citizenship and residence.

Under the Administration proposal, the motive for migration is immaterial. The individual would be liable at expatriation for $2.8 million in taxes on accrued capital gain. In addition, the individual would be liable for whatever taxes the new country of residence imposes. If the new country of residence imposes no taxes, the individual benefits to the extent the payment of $2.8 million is less than the present value of the lifetime tax payments, both income

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[100] Parts V.A. and V.C. discuss enforceability and likely compliance under present law and the Administration proposal.

[101] Assets accumulate at the rate of 6.04 percent per year, the after tax rate of return (10 percent less the 39.6-percent income tax).

taxes and estate taxes, he would have made, $7.8 million in this example.[102] If the individual were to move to a country with taxes comparable to the United States, the lifetime tax liability would be increased by the deemed recognition of a capital gain that could not otherwise have been taxed. Of course, the individual's lifetime tax liability is not increased by the full $2.8 million tax payment on the deemed recognition, because by paying this tax the individual's invested assets are reduced. This would reduce the stream of lifetime earnings and thereby reduce the income and estate taxes paid to the new country of residence.[103]

Example (2): High-basis assets, low consumption

Assume the individual has capital assets valued at $10 million with a basis of $10 million.[104] Also, assume the individual will never consume but only reinvest any income the assets might continue to generate and that the assets generate a 10-percent dividend annually. In addition, assume that the individual dies after 20 years.

If the individual retains U.S. citizenship, the individual's lifetime tax liability will be the same as in the previous example. Similarly, if the individual were to relinquish U.S. citizenship with or without tax avoidance as a principle purpose, the individual's lifetime tax liability under present law would be the same as in the example above.

Under the Administration proposal, if the individual were to relinquish U.S. citizenship, the individual would be liable for no taxes at expatriation because there is no accrued capital gain. The individual would, however, be liable for whatever taxes the new country of residence imposes. If the new country of residence imposes no taxes, the individual is better off than if he had not relinquished citizenship by the full amount of future U.S. taxes forgone. If the individual were to move to a country with taxes comparable to those in the United States, the lifetime tax liability would be no different than if the individual had chosen to retain U.S. citizenship and residence.

Example (3): Low-basis assets, high consumption

Assume the individual has capital assets valued at $10 million in which he has a zero basis. In this case, assume that the individual consumes all after-tax income and also consumes $500,000 of principal annually. Assume the invested principal pays a 10-percent dividend annually. In addition, assume that the individual dies after 20 years.

If the individual retains U.S. citizenship, the individual will pay taxes on dividends and capital gains annually. To consume the principal, the individual must realize gain on some of the assets.

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[102] The present value of lifetime payments is calculated discounting the tax payments at the 10-percent pre-tax rate of return.

[103] The comparisons would, of course, be different if the taxpayer were assumed to realize some or all of accrued gains prior to death. The results would also change were the individual to make contributions or bequests to charity or taxable and nontaxable gifts. Conceptually, such gifts and charitable contributions and bequests can be thought of as consumption.

[104] Two ordinary circumstances may give rise to taxpayers with both high wealth and a high basis in their assets. First, a taxpayer recently may have sold their business or other assets in a taxable transaction. Second, a taxpayer recently may have inherited assets, resulting in the basis of the assets being stepped up to fair market value.

Assume the $500,000 million in consumption from his principal is tax inclusive, so is comprised of $140,000 of taxes and $360,000 of consumption. Taxes on dividends will decline annually as dividends decline with the declining principal balance. The taxes on dividends will be $396,000 the first year, $376,200 the second year, $356,400 the third year, etc. At the time of death, the individual would have no estate remaining.

If the individual were to relinquish U.S. citizenship with tax avoidance a principal purpose, under present law the individual would be liable for the first 10 years of taxes on dividends and capital gains as described above. If the individual's new country of residence levies no taxes, the individual would be better off than if he had retained U.S. citizenship by forgoing the second 10 years of U.S. income taxes. If the new country of residence imposes taxes comparable to those in the United States, the individual is worse off for having paid double taxes for the first 10 years.

If the individual were to relinquish U.S. citizenship and avoidance of taxes were not a principal purpose, under present law, emigration to the zero-tax country would make the individual better off by the amount of all U.S. taxes avoided. If the individual were to emigrate to a country with taxes comparable to the United States, the same total taxes would be paid.

Under the Administration proposal, the motive for migration is immaterial. The individual would be liable at expatriation for $2.8 million in taxes on the accrued capital gain. In addition, the individual would be liable for whatever taxes the new country of residence imposes. If the new country of residence imposes no taxes, the individual would benefit by $666,213, the difference between the $2.8 million due under the Administration proposal and the present value of taxes for which the individual would be reliable were he to remain in the United States. However, this result is sensitive to the pattern of consumption and recognition of $500,000 in capital gain annually. If the individual donated $500,000 million to charity annually or could consume the $500,000 million tax-free, under the Administration proposal, the individual would have a higher lifetime tax liability by $525,686 in present value because the present value of paying $2.8 million in capital gain taxes upon relinquishing citizenship exceeds the present value of paying income tax annually on the income generated by the remaining invested principal (approximately $2.3 million in this example). Were the individual to consume annually the $360,000 left from payment of tax on the annual gain of $500,000 and donate all other income to charity, the individual's tax liability under the Administration proposal would be larger yet.[105] If the new country of residence imposed taxes comparable to the United States, the individual would be worse off by the initial payment of $2.8 million less the reduction in income taxes payable in the new country of residence as a result of the diminution of wealth resulting from the tax on the deemed recognition.

[105] Present law limits charitable contributions as a percentage of income. This example ignores such limitations.

Example (4): High-basis assets, high consumption

Assume the individual has capital assets valued at $10 million with a basis of $10 million. Assume that the individual consumes all of after-tax income and also consumes $500,000 of principal annually. Assume the invested principal pays a 10-percent dividend annually. In addition, assume that the individual dies after 20 years.

If the individual retains U.S. citizenship, the individual's lifetime tax liability will be as described in example (3) above, less the $140,000 paid annually in taxes on realized capital gains in example (3), as the individual has no accrued gains. If the individual were to relinquish U.S. citizenship, lifetime tax liability would be as described in example (3), less the $140,000 paid annually in taxes on realized capital gains, both in the case in which tax avoidance was a principal purpose and the case in which the avoidance was not a principal purpose.

Under the Administration proposal, the individual would pay no tax at the time of expatriation, as there was no accrued gain. If the individual's new country of residence imposes no taxes, the individual is better off by the entire amount of U.S. taxes forgone. If the individual's new country of residence imposes taxes comparable to the United States, the individual's lifetime tax liability is the same as if he had remained a U.S. citizen.

General discussion

The examples above highlight the factors that affect the individual's lifetime tax liability under retention of citizenship and relinquishment of citizenship, under present law and under the Administration proposal. Holding all else equal, it is always more advantageous to emigrate to a zero-tax country than to a country with taxes comparable (or higher) to those in the United States. Relinquishment of citizenship and emigration to a country with taxes comparable to those in the United States can subject the individual to a substantially higher lifetime tax liability under either present law or the Administration proposal. If treaties reduce or eliminate potential double taxation under present law, in the absence of relief from double taxation, the Administration proposal could produce greater lifetime tax burdens than present law.

Submerged within the simple examples above are subtle tradeoffs of various different tax rates that different countries may impose. For example, some countries do not tax capital gains while others do. Some countries have higher top marginal tax rates on income than does the United States, but lower top marginal estate or inheritance tax rates. The examples simplify the U.S. income tax and estate tax rate structures and ignore State and local income taxes which may add significantly to lifetime income tax burdens. The examples highlight that comparison of the Administration proposal to present law and retention of citizenship involves a comparison of paying taxes on capital gains in the present in lieu of potential taxes on capital gains, ordinary income, and estate taxes in the future. Such comparisons of lifetime tax liability are likely to vary from country to country. Tax treaties also will affect cross-country comparisons. The United States has treaties with many countries that might be considered to have comparable tax systems. These treaties may reduce the potential for double taxation.[106]

The simple examples also ignore withholding rules applicable to U.S.-source income received by non-U.S. persons. While the rates of withholding tax vary under prevailing tax treaties, the existence of withholding implies that with respect to U.S.-source income some tax would be imposed on the income of an individual who expatriates to what might otherwise be a zero-tax country in the examples above.

The lifetime tax liability varies substantially between present law and the Administration proposal depending upon whether the would-be expatriate owns "high-basis" assets or "low-basis" assets, that is, depending upon whether or not the wealth consists of substantial accrued gains. Under the Administration proposal, the would-be expatriate generally is never worse by expatriating if he or she has high-basis assets. This is because, unlike present law, the Administration proposal does not impose a tax on income received after expatriation.

The lifetime tax liability also shows substantial variance to the consumption pattern of the expatriate. Part of the tax burden that arises from retention of U.S. citizenship is the estate tax liability. If an individual consumes from wealth he or she incurs no current tax liability, as the United States does not have a general consumption tax, and he or she reduces the value of his future estate and thereby diminishes his or her future tax liability.[107] Conversely, low consumption may cause the individual's principal balance to rise and cause an increase in potential future estate tax liability. Such further capital accumulation also may increase current earnings that may be taxable as income.

Related to the importance of the individual's consumption pattern is any propensity he or she might have to make charitable donations or bequests from accumulated wealth. While conceptually charitable donations and bequests can be thought of as similar to consumption, in that each diminishes the potential future estate, there is a difference in the case of low-basis assets. As noted above, to consume from low-basis assets generally the taxpayer must recognize gain and pay tax on the gain recognized prior to consuming.[108] A charitable donation of appreciated assets may not require the recognition of income.

Other variables important to the comparison of lifetime tax liabilities not directly highlighted by the examples are: the earnings performance of the individual's assets; the individual's expected lifetime; and the appropriate discount rate to apply to future tax liabilities. The Administration proposal would tax accrued gain at the time of expatriation. Present law taxes income for 10 years after expatriation. Clearly, the earnings performance of the individual's assets are important in the comparison. Where the assets

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[106] See Parts V.F. and V.G. for a discussion of issues of double taxation and tax treaties.

[107] This discussion ignores State-level general sales taxes The examples above also ignored the possibility that an expatriate might pay consumption taxes in the new country of residence as many countries of the world have value-added taxes.

[108] The individual could consume without recognizing gain. The individual could pledge his or her entire wealth as collateral for a loan. The individual could then consume the loan proceeds over his or her lifetime. No income tax liability arises from the receipt of loan proceeds. Upon his or her death, the estate would consist of the original assets and the debt owed on the loan, resulting in no net estate and no estate tax.

produce little or no future income, and hence no income tax, by collecting tax on accrued gain in advance of any future realization the Administration proposal may increase the lifetime tax liability of the expatriate. Similarly, if the assets were to decline in value subsequent to expatriation, the lifetime tax liability imposed by the Administration proposal increases relative to potentially lower future income and estate tax liabilities that might arise were the individual to retain U.S. citizenship. Conversely, the greater the earnings, the less the lifetime tax liability the Administration proposal is likely to impose compared to present law which may tax those earnings.

Where the estate tax, either in the United States or in a new country of residence, is important to the comparison of lifetime tax liability, the individual's life expectancy and the determination of an appropriate rate of discount are important to the comparisons of lifetime tax liabilities. For a given rate of appreciation of assets, the greater the individual's life expectancy and the greater the discount rate, the lower the present value of the expected future estate tax liability.

V. SPECIFIC ISSUES RELATING TO PROPOSALS TO MODIFY THE TAX TREATMENT OF EXPATRIATION

A. Effectiveness and Enforceability of Present Law With Respect to the Tax Treatment of Expatriation

1. Effectiveness of present law

Although there are provisions in present law imposing a special tax on individuals who expatriate for tax avoidance reasons (e.g., sec. 877), there is conflicting evidence as to whether these provisions are effective in discouraging individuals from expatriating to avoid their United States tax liabilities. A U.S. citizen who expatriates for tax avoidance reasons is subject to a special tax on U.S. source income for 10 years after expatriation. In addition, if the expatriate dies or transfers property by gift within the 10-year period, special U.S. estate and gift tax provisions apply. Tax practitioners and personnel in U.S. embassies have provided at least some anecdotal evidence that individuals inquiring about the potential tax liability they might incur upon expatriation have expressed concern that they could be subject to U.S. taxation for an additional 10 years. Other practitioners, however, have indicated that these provisions do not act as a deterrent to individuals seeking to expatriate for tax reasons. While there is no way of actually knowing how many individuals are dissuaded from expatriating by the existence of the present-law rules, it is relevant to note (as discussed in Part V.B., below) that the incidence of expatriation generally, and by wealthy persons in particular, is relatively insignificant.

The Treasury Department views the present-law provisions as not effective and not enforceable. There are several reasons why Treasury may view present law in this manner. First, there are legal methods to avoid taxation under section 877 (and the corresponding estate and gift tax provisions) through proper tax planning, although in certain cases such planning requires an individual to accept certain risks. Even if an expatriate is subject to tax under section 877, the income taxed under section 877 is limited in scope. No tax is imposed on foreign source income, even though such income would be taxed if the individual remained a U.S. citizen or resident. In addition, the section 877 tax applies only for the first 10 years after expatriation. Thus, an individual who is willing to hold appreciated assets for at least 10 years after expatriation would not be subject to the section 877 tax when such assets are sold. Extensive books have been written, and seminars conducted, setting forth details on how to legally and effectively avoid taxation upon expatriation under present law.[109] For example, individuals are advised to own only foreign assets, to convert most or all of their income into foreign source income, and to carefully plan the timing of their transactions to avoid taxation under the existing U.S. expatriation tax rules. Because of the limitations in the scope of present law, an individual may be able to achieve significant tax savings through expatriation, even if the person is found to have

[109] See, e.g., Langer, *The Tax Exile Report: Citizenship, Second Passports and Escaping Confiscatory Taxes* (2d ed., 1993-1994).

had a tax avoidance motive, and is thus subject to the special expatriation tax rules.

In general, the U.S. tax system is dependent upon voluntary compliance in order to be effective, but there appears to be conflicting evidence as to the extent of voluntary compliance with respect to present-law section 877. The Joint Committee staff discovered some evidence that there may be voluntary compliance with section 877 by certain expatriates in the course of its study. The IRS apparently was unaware of this evidence of possible compliance and believes there is generally no voluntary compliance with section 877.[110] There are at least two possible explanations for the IRS's view that there is little voluntary compliance with section 877. First, it could be because the special tax imposed under section 877 applies only to those individuals who expatriate with a principal purpose of avoiding tax, and few individuals will voluntarily admit that they have such a motive. (Instead, it is generally left to the IRS to "catch" these individuals after they have expatriated, which may be difficult given the practical limitations of monitoring and pursuing taxpayers who have physically left the United States.) Second, it may be that individuals expatriating with a tax avoidance motive have structured their affairs so as to legally avoid the application of section 877. Alternatively, the IRS's failure to find evidence of voluntary compliance with section 877 may be substantially attributable to the possibility that there are relatively few individuals with any significant wealth who are expatriating, for tax avoidance purposes or any other purpose.

Finally, section 877 is ineffective with respect to individuals who relocate to certain countries with which the United States has a tax treaty, because these treaties may not permit the United States to impose a tax on its former citizens who are now resident in that country. This issue is discussed more fully in Part V.F., below.

2. Enforcement of present law

The IRS appears to have devoted little in the way of resources to the enforcement of section 877. No regulations have been issued under section 877 since its enactment in 1966. Regulations could have been issued setting forth factors under which a tax avoidance motive would be presumed to exist (for example, if the taxpayer moved to one of a specified list of tax havens, or engaged in certain types of pre-emigration tax planning). A taxpayer would then have the burden of showing that either these factors did not exist, or that even though these factors did exist, the loss of citizenship did not have as one of its principal purposes the avoidance of taxes. The IRS also has not attempted to exercise any regulatory authority, nor has it sought Congressional expansion of regulatory authority, to preclude the use of sections 367 or 1491 by taxpayers seeking to avoid taxation after expatriation by converting their U.S. income into foreign source income. If the requirements of sections 367 and 1491 were tightened, taxpayers would be less able to transfer their wealth out of the United States without the payment of U.S. tax.

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[110] See, letter from Commissioner Richardson dated April 26, 1995 (included in Appendix G) indicating as follows: "[The IRS] ... is not aware of any taxpayers who have voluntarily filed returns indicating that they are subject to section 877."

The IRS collects information on Form 1040NR (the form filed by nonresident alien individuals who have U.S. source income) that could be helpful in enforcing the present-law expatriation tax provisions; for example, Form 1040NR asks whether the taxpayer has ever been a U.S. citizen, which would identify individuals who might have expatriated for tax avoidance reasons. However, this information is apparently not used for this purpose. Indeed, the IRS appears to be unaware that this information is even collected under present law, stating that "we will consider whether including [such] a question on Form 1040NR would enhance enforcement in this area . . . [and] must consider whether requiring hundreds of thousands of aliens to respond to a question on Form 1040NR in order to identify a few expatriating taxpayers is an efficient use of the Form 1040NR."[111] The information already collected on the Form 1040NR, primarily the information as to what country has issued the taxpayer's passport, and whether the person was ever a U.S. citizen, could be used to identify former citizens who have relocated to countries known to be favored by individuals seeking to expatriate for tax avoidance purposes.

The IRS states that it is not worthwhile to devote significant resources to the enforcement of present law, because of the difficulty in proving a tax avoidance purpose. Section 877 (and the comparable estate and gift tax provisions) provide that once the IRS establishes that an individual's loss of citizenship would substantially reduce his or her taxes, the burden of proof shifts to the taxpayer to prove that the avoidance of taxes was not a principal purpose of the expatriation. The IRS would likely be required to rebut the taxpayer's assertions of non-tax motives in order to prevail. While these provisions do pose a potentially difficult evidentiary hurdle, the evidence suggests that the IRS has rarely attempted to clear this hurdle. There have been only two cases litigated with respect to the tax avoidance issue, and the IRS prevailed in one case and lost the other.[112] It is possible, however, that the perceived litigation risk to the IRS in satisfying a subjective standard has caused the IRS either to not pursue potentially meritorious cases, or to settle those cases in advance of trial. A further explanation for this lack of enforcement effort could be an absence of any significant volume of taxpayers expatriating, for tax avoidance purposes or any other purpose.

Enforcement efforts could be enhanced through increased information sharing between the IRS and the State Department with respect to the names and social security numbers of individuals who have expatriated. The State Department does not currently collect social security numbers from expatriating individuals, nor does it provide the IRS with the names of all individuals who relin-

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[111] See, letter from IRS Commissioner Margaret Milner Richardson dated April 26, 1995 (included in Appendix G).

[112] In *Kronenberg v. Comm'r*, 64 T.C. 428 (1975), the court found a tax avoidance motive based on the "flurry of activity" undertaken by Mr. Kronenberg in the year between the date that a large corporate liquidating distribution was announced and his eventual expatriation two days prior to the distribution. In contrast, the court found in *Furstenberg v. Comm'r*, 83 T.C. 755 (1984), that even though Cecil Furstenberg had sought tax advice prior to her expatriation, she had not relinquished her U.S. citizenship for tax avoidance purposes but rather because of her decision to marry a titled Austrian aristocrat and her "lifelong ties to Europe".

quish citizenship on a routine and regular basis.[113] It appears that the IRS has never requested that such information be provided by the State Department. The State Department does, however, respond to specific IRS requests as to whether a particular individual has relinquished his or her U.S. citizenship.

The State Department appears to be reluctant to disclose information to the IRS on a routine basis without specific statutory authority because of the strictures of the Privacy Act, 5 U.S.C. sec. 552a. The Privacy Act generally prohibits U.S. governmental agencies from disclosing individual records maintained by the agency without the individual's consent. There are, however, certain limitations and exceptions to the Privacy Act that limit its applicability to the information involved here. First, the Privacy Act, by its terms, pertains only to records about U.S. citizens and aliens lawfully admitted for permanent residence (i.e., green-card holders).[114] Thus, the Privacy Act does not appear to prohibit the disclosure of information regarding individuals who are no longer U.S. citizens, unless such individuals have immediately obtained a green card. The Privacy Act also contains an exception for disclosures to governmental agencies "for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought."[115] It is unclear whether this exception would allow the routine exchange of information to enhance the IRS's collection efforts, or whether it is instead aimed solely at specific enforcement proceedings against an identified individual. Lastly, there is an exception for the "routine use" of a record "for a purpose which is compatible with the purpose for which it was collected".[116] The routine use exception would not apply to information collected by the State Department unless the individuals providing the information were informed that it would be used for tax collection purposes.

To alleviate any concerns that the Privacy Act could potentially apply to an information exchange between the IRS and State Department, Congress could statutorily require that the State Department collect certain information from expatriating individuals and provide that information to the IRS on a routine basis. A similar statutory requirement was imposed in 1986 through the enactment of section 6039E of the Code (requiring that social security numbers and other tax information be obtained when an individual applies for a U.S. passport or green card, and that such information be forwarded to the IRS). The State Department has stated that if such a provision were enacted, it "would be pleased to furnish the IRS with the names, foreign addresses, foreign nationality and social security numbers of all persons who are issued Certificates of Loss of Nationality on a routine and regular basis."[117]

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[113] See May 9, 1995 letter from Wendy Sherman, Assistant Secretary, Legislative Affairs, U.S. Department of State, (included in Appendix G).

[114] 5 U.S.C. section 552a(a)(2).

[115] 5 U.S.C. section 552a(b)(7).

[116] See, 5 U.S.C. sections 552a(b)(3) and 552a(a)(7).

[117] See May 9, 1995 letter from Wendy Sherman, Assistant Secretary, Legislative Affairs, U.S. Department of State (included in Appendix G).

B. Current Level of Expatriation for Tax Avoidance Purposes

A significant amount of attention has been given to the cases of several high-profile individuals who recently expatriated from the United States, allegedly for tax avoidance reasons.[118] The study by the Joint Committee staff of this matter revealed several important facts. First, the level of individuals renouncing their U.S. citizenship generally is quite low. The United States has a population of approximately 260 million people. During the past fifteen years, an average of 781 individuals per year have relinquished their U.S. citizenship. Since 1962, the average has been 1,146 individuals per year. There is no evidence of any particular upward trend in expatriations during this period. Second, with respect to the relatively small group of individuals who have relinquished their U.S. citizenship, their actual motives cannot be readily ascertained, thus making it difficult to determine the extent to which tax avoidance is a motivating factor.

Notwithstanding certain anecdotal reports, the evidence gathered in the course of the study by the Joint Committee staff suggests that there is no significant level of expatriation for tax avoidance purposes for two reasons. First, in assessing the current expatriations, it is clear that there are many nontax reasons why individuals relinquish their U.S. citizenship—for example, they may wish to return to the country where they or their ancestors were born, they may need to become a citizen of another country in order to obtain employment in that country's government or to do business in that country, or they may simply prefer to live somewhere other than the United States. In many cases, individuals relinquish their U.S. citizenship after residing outside the United States for a significant period of time (in some cases, for their entire lives).

Second, claims suggesting that, absent legislative action, 24 billionaires would renounce their U.S. citizenship are not supported by evidence gathered in the course of the Joint Committee study.[119] In order to evaluate these claims, the Joint Committee staff compiled a list of all individuals who appeared in the "Forbes 400" listings of the richest Americans for the most recent 10 years (1985-1994),[120] and asked the State Department to confirm what

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[118] For example, a recent *Forbes* article identified seven "new refugees" who may have expatriated for tax avoidance reasons (John Dorrance III, Kenneth Dart, Michael Dingman, Ted Arison, J. Mark Mobius, Frederick Krieble, and Jane Siebel-Kilnes), and cited one lawyer in the process of working on six more expatriations. (See, Lenzner and Mao, "The New Refugees," *Forbes*, November 21, 1994.) In addition, two attorneys were featured in the "PrimeTime Live" episode aired on February 22, 1995, one of whom claimed to have helped "about a dozen of his wealthy clients" expatriate, and another who "helped about 30 people expatriate". When asked about the reasons for expatriation, one of these attorneys, William Zabel, stated, "I've never met anyone who gave it up without having at least one of their motives to save taxes . . . . It's about the money." Four of the seven individuals identified in the *Forbes* article were also identified in the Joint Committee staff's investigation. With respect to the claims made on "Prime Time Live", however, the Joint Committee staff has been unable to find corroborating evidence to support those claims.

[119] See, e.g., remarks made by Vice President Al Gore at the National Press Club on April 3, 1995 (". . . Republicans are fighting to allow these 24 billionaires to escape $1.4 billion in taxes by renouncing their citizenship and turning their backs on the United States of America.")

[120] There is very little governmental or published data with respect to individual wealth. For example, tax return data does not include information regarding an individual's net worth. The "Forbes 400" list is one of the only published sources for identifying wealthy individuals, but it does have limitations—for example, the amount of net worth for each individual is based on deliberately conservative estimates, and may not include certain "hidden" assets, such as inter-

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portion of these individuals had renounced their citizenship. The amount of wealth needed to be included in the Forbes 400 lists varies year-by-year. In 1994, individuals on the list had a net worth of $310 million or more (as determined by *Forbes*). The 10-year list compiled by the Joint Committee staff included 1,004 names, of which 131 had wealth of at least $1 billion. Some of these names, however, were listed only by family (e.g., the "Alfond family"), and thus lacked sufficient detail to determine whether those individuals might have expatriated. After these 203 "family" names were eliminated, 801 names remained for the State Department to check against their records, and, of these, 5 potential matches were found. One of these potential matches was rejected, because the birth date listed in the State Department records did not coincide with the individual's age as listed in *Forbes*. Thus, of the 801 wealthiest Americans, the Joint Committee staff has found that 4 of them renounced their U.S. citizenship in the last 10 years—Ted Arison (net worth of $3.65 billion [121]), Robert Dart (net worth of $330 million), John T. Dorrance III (net worth of $1.2 billion), and Anthony Martin Pilaro (net worth of $390 million).[122] Even with respect to these four individuals, however, the Joint Committee staff has no way of determining whether tax avoidance was a consideration in their decision to expatriate. Based on this analysis, it appears that the claims of the number of billionaires expatriating for tax avoidance reasons have been overstated.[123]

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ests in trusts, intrafamily arrangements, or private investment companies. See, "Rules of the Chase," *Forbes*, October 17, 1994.

[121] Net worth for each individual was taken from the most recent "Forbes 400" list on which the individual appeared.

[122] Two of the individuals listed in the November 21, 1994, *Forbes* article on "new refugees"—Kenneth Dart and Michael Dingman—were included on the State Department's lists of expatriates for 1994 and 1995 (see Appendix H), but their net worth was apparently insufficient for listing in the Forbes 400.

[123] Indeed, a review of the most recent "Forbes 400" list of wealthiest Americans indicates there are only approximately 112 billionaires in the United States.

C. Administrability and Enforceability of the Proposals

In some respects, the new proposals to modify the tax treatment of expatriation may be no more enforceable than the existing provisions that provide a tax on certain expatriating individuals. In particular, the new proposals raise a number of administrability issues that do not exist under present law. For example, because the proposals would impose a tax on unrealized gains (and thus no arm's-length sale price for the assets has been determined), there may be significant valuation disputes between taxpayers and the IRS. These valuation issues are even more problematic in the case of interests in trusts, and are discussed in further detail in Part V.H., below. The proposals also raise liquidity problems for taxpayers, because the assets held at the time of expatriation may not be liquid, and thus the taxpayer may not have sufficient resources to pay the tax upon expatriation. The modified bills introduced by Senator Moynihan and Representative Gibbons may alleviate these liquidity concerns to some degree, although they do not completely eliminate the concerns. This issue is also discussed in further detail in Part V.H., below.

The proposals also present serious administrability concerns with respect to their application to green-card holders. Unlike the process for relinquishing citizenship, there are no formal procedures when an alien terminates U.S. residency by which such an individual is required to relinquish a green card, nor is there any incentive for an individual to actually turn in a green card upon leaving the United States. According to INS officials, green-card holders who leave the United States with no intention of returning frequently fail to relinquish their green cards, either due to oversight, or to keep open the option of someday returning to the United States. If such individuals were made aware that a special tax would be imposed upon the relinquishment of a green card, it is even more likely that these individuals would simply leave the United States without ever notifying the authorities of their departure. Thus, it may be extremely difficult for the IRS to determine the identity of individuals who terminate their long-term U.S. residency, absent any voluntary compliance by these individuals, and thus it may be virtually impossible to collect the new expatriation tax from such individuals when they depart.

An additional difficulty arises in the context of green-card holders in that some individuals who would otherwise obtain green cards could instead obtain certain types of nonimmigrant visas if the proposals were enacted, and thus escape taxation under the proposals. For example, many businesspeople might be able to qualify for "E" visas as treaty traders or treaty investors. Although E visas are granted for only one or two-year terms, they can be extended indefinitely, and thus, individuals holding E visas could remain in the United States for an extended period of time. Even if such individuals were taxed as U.S. residents for U.S. income tax purposes (because of their "substantial presence" in the United States),[124] they would not be subject to the proposed expatriation tax if they are not green-card holders. Thus, there is a significant

[124] See Code section 7701(b)(3).

group of individuals who would be able to legally avoid taxation under the expatriation tax proposals.

In some respects, the proposals may be more enforceable than present law, although the IRS would need to dedicate increased resources to enforcing any new expatriation law if it is to have any effect. One factor that makes the proposals more enforceable is that they eliminate the subjective standard that applies under present law. Because there is no "intent" requirement under the proposals, the IRS would not have to delve into specific factual details for each expatriating individual to determine if the individual had a tax avoidance motive. Instead, the IRS would simply be required to show that an individual expatriated in order to assess the tax. Removing the intent requirement might also lead to increased voluntary compliance, because individuals would no longer be able to rationalize that they are not subject to tax because they had other reasons for expatriating. Many of these individuals would not want to break the law, and only take advantage of the weaknesses of present law because they can do so legally. To the extent that an individual does not intend to return to the United States and does not care if he or she abides by the law, however, the IRS will likely have the same problems it has under present law with respect to monitoring and investigating individuals who have physically removed themselves from the United States. The new proposals also reduce taxpayers' ability to avoid taxation through tax planning, because a more comprehensive tax base is utilized, and it is thus more difficult to structure one's holdings in a manner designed to avoid the tax.

To improve administrability and enforceability, any new legislative proposal to impose a tax upon expatriation should statutorily provide for mandatory information sharing between the IRS and the State Department. As discussed in Part V.A., above, the existing proposals do not provide for information-sharing, nor does such an exchange take place under present law. A routine exchange of information from the State Department to the IRS providing the names and social security numbers of expatriating individuals would greatly enhance the IRS's collection efforts. If green-card holders are included in the proposal, there also should be a provision requiring that the INS notify the IRS of all individuals who have relinquished their green cards. As mentioned above, however, even the INS may not be notified when a green-card holder decides to permanently leave the United States, and there appears to be no incentive that could be provided to ensure that departing long-term permanent residents of the United States actually relinquish their green cards upon departure.[125] As a result, even if there is information sharing between the IRS and INS, there may be no effective method of identifying those green-card holders who have terminated their residency in the United States, and thus are liable for the new expatriation tax.

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[125] Technically, a person who has obtained a green card and has never relinquished it (or had it revoked) has a continuing obligation to pay U.S. taxes as a resident alien. See section 7701(b)(6)(B). As a practical matter, however, it is unclear to what extent such taxes are actually collectible.

D. Constitutional and International Human Rights Implications

1. Underlying premises for analysis

The Administration proposal and the Senate amendment to H.R. 831 would treat certain property held by a U.S. citizen who relinquishes his U.S. citizenship as if it were sold immediately before expatriation. Thus, the act of expatriation would be treated as triggering a realization of gain (to the extent such gain exceeds $600,000 if one individual expatriates or $1.2 million if both husband and wife expatriate) that would be subject to U.S. income tax. Similarly, S. 700 and H.R. 1535 also would treat certain property held by an expatriate as if it were sold immediately before expatriation, but this general treatment would not apply if the expatriate elects to continue to be taxed as a U.S. citizen with respect to one or more designated assets—thus subjecting such designated assets to continuing potential liability for U.S. income taxes, excise taxes, and gift, estate, and generation-skipping transfer taxes—and provides adequate security to ensure payment of future U.S. tax liabilities with respect to such assets.[126] The Administration proposal and S. 700 and H.R. 1535 (but not the Senate amendment to H.R. 831) also provide similar tax treatment when certain long-term resident aliens terminate their residency in the United States.

The taxing schemes described above raise the question whether it is constitutionally permissible to impose U.S. income tax on the increase in the value of assets that continue to be held by an expatriate or former long-term resident of the United States. One constitutional issue raised by these proposals concerns whether the proposed taxing schemes violate the Constitution on the ground that the Sixteenth Amendment contains an implicit requirement that gains be "realized" (and, thus, converted to "income" as that term is used in the Sixteenth Amendment) before Federal income taxes may be imposed. Moreover, even if there is no bar under the Sixteenth Amendment to enactment of the proposed expatriation tax regimes (i.e., the gains that would be taxed may properly be considered "income" under the Sixteenth Amendment), the question follows whether other aspects of the proposals conflict with constitutional principles (such as the due process clause of the Fifth Amendment) or are inconsistent with rights to emigrate and expatriate recognized under international law.

In hearings held by the Senate Committee on Finance and the House Committee on Ways and Means, two opposing views were suggested[127] regarding the propriety—under the Sixteenth Amendment and international human rights principals—of the expatriation tax proposals. Under the first view, the expatriation tax proposals are improper because, in effect, a significant monetary penalty (i.e., a tax on the act of expatriation) would be imposed at a time when the expatriate has no "income" and, thus, can have no

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[126] This election, which could be made on an asset-by-asset basis, would be allowed under S. 700 and H.R. 1535 only if the expatriate waives treaty benefits that might apply with respect to assets covered by the election.

[127] Several witnesses expressed concerns about the validity of the proposals under the Constitution and international human rights principles, but no witness actually reached the conclusion that the proposals were invalid.

Federal income tax liability. Under the second view, the expatriation tax proposals are proper because, in effect, they require the expatriate to "settle up" on a potential tax liability which, although generally not imposed under statutory rules for gains on property remaining within the jurisdiction of the U.S. tax systems, must be imposed at the time of expatriation in order to roughly equalize the tax treatment (considering income, estate, and gift taxes) of citizens who exercise their right to expatriate and citizens who exercise their right to retain U.S. citizenship. Although the constitutional and international human rights questions, in theory, are distinct, how one views the concept of "realization" is the critical starting point for analyzing both questions. More specifically, the question inevitably must be addressed whether realization is an element that defines what is potentially subject to tax under the U.S. tax system (thus, without realization, there is nothing that can be subject to tax) or, rather, is realization a concept for determining the timing for when a tax liability will be finalized (such that increases in the value of assets are encompassed in the economic gains that are taxed by the U.S. income, estate, and gift tax regimes, but tax on so-called unrealized gains generally is deferred as a matter of administrative convenience provided the property remains within U.S. tax jurisdiction). How one views the concept of "realization" is the key factor underlying the above two opposing views on the validity, under both the Sixteenth Amendment and human rights principles of international law, of the expatriation tax proposals.

A secondary conceptual issue underlying the opposing views is when is it appropriate to view the income tax system and the estate and gift tax systems as separate from each other (such that determining the proper treatment of gain under one system is independent of the tax consequences that flow under the other systems) or as part of a comprehensive, inter-connected regime [128] designed to ensure taxation, at least in the long-run, of economic gains that have a nexus to the United States, even if current income taxation of some gains is deferred for administrative or policy reasons. As discussed in more detail below, this conceptual issue is particularly significant in analyzing the validity of the expatriation tax proposals under principles of international law. If, ignoring the descriptive labels of the various portions of the Internal Revenue Code, the U.S. tax system is viewed in its entirety, the tax treatment under the proposals of individuals who renounce their citizenship can be compared to the combined income, estate, and gift tax treatment of those citizens who retain their citizenship. To the extent that individuals who renounce citizenship would be subject to a

[128] As the late Professor Stanley Surrey pointed out in 1941 when he concluded that "realization" was not a meaningful constitutional requirement for Federal income tax purposes, the same results of an income tax system could be achieved by imposing tax on discreet activities in the form of a direct, excise taxes—which would not be subject to the realization requirement, as is true of the current estate, gift, and transfer tax provisions—measured by the value of property involved in the discreet activities: "In this sense, the income tax is an aggregation of various indirect taxes, the most important being the tax on income itself." Surrey, "The Supreme Court and the Federal Income Tax: Some Implications of the Recent Decisions," 35 *Ill. L. Rev.* 779, 793 (1941). Likewise, the U.S. tax system can be viewed in the aggregate as a combination of the income, estate, gift, and transfer tax provisions—part transfer tax, part accretion tax, part consumption tax—ignoring the descriptive labels applied to different chapters of the Internal Revenue Code. See Shaviro, "An Efficiency Analysis of Realization and Recognition Rules Under the Federal Income Tax," 48 *Tax L. Rev.* 1 (1992).

more burdensome tax treatment than the treatment accorded those who remain U.S. citizens, the question follows whether this disparity in tax treatment constitutes an unreasonable infringement on the international human right to retain or renounce one's citizenship.

2. Constitutional issues

Eisner v. Macomber

An examination of the concept of "realization" usually begins by addressing the issue of the continued validity and scope of the U.S. Supreme Court's decision in *Eisner v. Macomber*, 252 U.S. 189 (1920). This has been a topic of debate for 75 years.[129] The *Macomber* case is the only judicial decision where imposition of a Federal tax was found to be unconstitutional on the ground that the taxpayer had not yet realized "income" within the meaning of the Sixteenth Amendment at the time the tax was imposed. The *Macomber* decision was controversial when it was handed down in 1920 (after two oral arguments, the Court reached its decision on a five-to-four vote) and continues to be controversial to this day.[130]

Although the *Macomber* decision has never been expressly overruled, most commentators, and many lower courts, have questioned the continuing validity of a constitutional realization requirement found by the majority in *Macomber* to be implicit in the Sixteenth Amendment. In the view of most commentators, the general realization requirement is a formalistic concept that is not constitutionally mandated but rather is a matter of fairness and administrative convenience and, thus, a question of tax policy for the legislature and not the courts. The Supreme Court itself long ago rejected the specific definition of "income" postulated by the *Macomber* majority that "income" did not exist until gain was severed from the original capital. See *Helvering v. Bruun*, 309 U.S. 461 (1940).[131] More recently, the Court reiterated that "the concept

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[129] As Borris Bittker writes: "No other income tax case has been as extensively and acutely discussed as *Eisner v. Macomber*." B. Bittker, *Federal Taxation of Income, Estates, and Gifts*, vol. 1 (1981) at 1-23.

[130] The taxpayer in *Macomber* challenged the constitutionality of a provision of the Revenue Act of 1916, under which the value of a stock dividend was includible in the shareholder's taxable income. The taxpayer, who owned 2,200 shares of common stock of a corporation with only one class of common stock outstanding, received as a dividend an additional 1,100 shares of the same class of stock in the same corporation. The taxpayer's proportionate interest in the corporation was not altered, because all other shareholders likewise received the 50-percent stock dividend. Consequently, the *Macomber* majority characterized the stock dividend as "no more than a book adjustment . . . that does not affect the aggregate assets of the corporation or its outstanding liabilities; it affects only the form, not the essence, of the 'liability' acknowledged by the corporation to its own shareholders." 252 U.S. at 210. Relying on what it considered to be the "common speech" meaning of the term "income," the majority implied that it would not have approved of taxing, without apportionment, mere increases in the value of property:

> Here we have the essential matter: *Not a gain accruing* to capital, not a *growth* or *increment* of value *in* the investment; but a gain, a profit, something of exchangeable value *proceeding from* the property, *severed from* the capital however invested or employed, and *coming in*, being *"derived,"* that is, *received* or *drawn by* the recipient (the taxpayer) for his *separate* use, benefit and disposal; —that is income derived from property. Nothing else answers the description. (252 U.S. at 206-07).

[131] In *Bruun*, the Court upheld the imposition of tax on a lessor who reclaimed his land, upon which a building had been erected by the lessee. Rejecting the taxpayer's claim that he had not realized "income" within the meaning of the Sixteenth Amendment and that tax could be imposed on the enhanced value of the land due to the improvements only when the taxpayer disposed of the property, that Court stated that the "expressions" from *Macomber* regarding the meaning of "income" were limited to clarifying the distinction between an ordinary dividend and a stock dividend and were not controlling in defining "income" in other settings. 309 U.S. 468-

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of realization is 'founded on administrative convenience.'" *Cottage Savings Ass'n v. Commissioner*, 499 U.S. 554, 559 (1991)(citing *Helvering v. Horst*, 311 U.S. 112, 116 (1940)). Likewise, amendments to the Code since 1920 reveal that Congress in the past has viewed the *Macomber* majority decision as being of limited applicability as a continuing constitutional principle. Several provisions of the Code (discussed *infra*) currently impose income taxes on amounts which, under a literal reading of the *Macomber* majority decision, may be viewed as so-called "unrealized gains." To date, no court has found such amendments to the Code to be unconstitutional.[132]

Accordingly, if the *Macomber* holding is a mere historical "relic" rather than a valid statement of constitutional law, then there appears to be no other authority under which the expatriation tax proposals could be challenged on the ground that it is unconstitutional to tax an expatriate on the increase in value of assets which have not been sold or otherwise transferred to another person. (As discussed *infra* in more detail, however, an argument could be raised of possible constitutional dimension under the due process clause of the Fifth Amendment to the extent the proposals arbitrarily impose current tax on some individuals who have merely a contingent beneficial interest with respect to a trust or other assets over which they do not exercise dominion or control or to the extent the proposals retroactively impose tax on persons who have long since relinquished their U.S. citizenship.[133])

Even if the general realization event requirement of the *Macomber* ruling continues to have some vitality as a matter of constitutional law, the question follows whether the expatriation tax proposals nonetheless pass constitutional muster on the ground that the "realization" requirement is satisfied when property effectively is transferred to a new legal situs that alters the taxpayer's, and the Government's, legal relationship to the property. (See the Supreme Court's decision in *Cottage Savings*, where an exchange of similar assets of identical economic value but with new legal attributes was held to be a realization event for purposes of section 1001.) Under such a view, it is not the act of expatriation *per se* that triggers tax under the proposals—thus, not all property of an expatriate is subject to tax on built-in gain—but the theoretical

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69. See also *Commissioner v. Glenshaw Glass Co*, 348 U.S. 426, 430-31 (1955)(upholding taxability as "income" of punitive damages even though not satisfying the *Macomber* definition of "income" as being the product of capital or labor; the *Macomber* definition was "not meant to provide a touchstone to all future gross income questions").

[132] In *Helvering v. Griffiths*, 318 U.S. 371 (1943), a five-member majority side-stepped the issue of the continued validity of *Macomber* by adopting the view that Congress had enacted revisions to the accumulated earnings tax and provided for taxation of some types of stock dividends only to the extent consistent with *Macomber*. However, the majority admitted that cases such as *Bruun* and *Horst* had "undermined further the original theoretical bases of the decision in *Eisner v. Macomber*." *Id.* at 393-94. Moreover, the majority suggested that Congress should not feel "embarrassed" to pass legislation that conflicts with the *Macomber* decision: "There is no reason to doubt that this Court may fall into error as may other branches of the Government. Nothing in the legislative history or attitude of this Court should give rise to legislative embarrassment if in the performance of its duty a legislative body feels impelled to enact laws which may require the Court to reexamine it previous judgments or doctrine." *Id.* at 399.

[133] Most commentators adhere to the view that the concept of realization no longer rises to the level of constitutional dimensions, and the only constitutional test for including an item in taxable income is one of due process—in other words, "is it reasonable (to use the mildest phrase—perhaps 'despotic' would better represent the present Court) to include the particular item in question along with the other items making up gross income as the measure of a tax purporting to be levied on persons according to the yearly changes in their fortune." Surrey, 35 *Ill. L. Rev.* 779, 793 (1941).

transfer of property to a new legal situs for tax purposes. A taxpayer's act of expatriation could be characterized as a realization event with respect to only that property of the taxpayer (i.e., property other than real property and interests in domestic qualified retirement plans) that is effectively being removed from the jurisdiction of the U.S. tax systems.[134] The legal conversion of a person's status from citizen to noncitizen is accompanied by a conversion of jurisdictional attributes of certain property for tax purposes. In essence, the act of expatriation could be viewed as resulting in the transfer of assets other than real property from a citizen who is subject to the U.S. tax systems to a person who is no longer a U.S. citizen and is, thus, generally outside the jurisdiction of the U.S. tax systems.[135] Even those few supporters of the continued vitality of the *Macomber* ruling acknowledge that "realization" may require no more than a change in the taxpayer's relationship to property (and not necessarily a voluntary sale or transfer of property to a third party) and that there is an established exception to the general realization notion in situations involving offshore property and potential tax evasion.[136] Consequently, even assuming that the particular holding of *Macomber* continues to express a valid principle of constitutional law, it is possible to characterize expatriation as being accompanied by a "realization" with respect to certain assets in view of the change of the legal attributes of such assets, so that Government's inchoate interest in its receiving its share of any increase in value need not be extinguished.[137]

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134 As Surrey stated: "[I]f events occur which bring about a change with respect to the asset making measurement [of gain] desirable the reckoning [of tax] should be made. The change need not be such as to make measurement of value any the easier. It is enough that it marks a variation which warrants a halt in the postponement of a tax on admitted gain. If increase in the value of property be conceded income in the economic sense the decision not to tax that increase for one reason or another is simply a decision to base the income tax for the time being on something less than a taxpayer's total income. When an event occurs which legislators, and through them administrative officials, feel is sufficient to end the postponement, a realization of income has occurred in the legal sense. It is beside the point that many an event elected by the legislators or administrators is hardly very significant." 35 *Ill. L. Rev.* at 784.

135 Commentators generally take the position that, particularly in the area involving taxation and foreign jurisdictions, the realization concept generally is used to mark the "actual reckoning of taxation" but does not define the universe of amounts potentially subject to tax. See, e.g., Isenbergh, "Perspectives on the Deferral of U.S. Taxation of the Earnings of Foreign Corporations," *Taxes* (December 1988) 1062, at 1067.

136 See Ordower, "Revisiting Realization: Accretion Taxation, The Constitution, Macomber, and Mark to Market," 13 *Va. Tax Rev.* 1, 29-30, 56 (1993)(concluding that the *Macomber* principle requires that realization be triggered by an alteration of the taxpayer's relationship to property and not simply a change in the value of property; however, it is "equally likely" that the Supreme Court itself would either continue to adhere to *Macomber* or would expressly "relegate the traditional [realization] rule to the realm of administrative convenience").

137 For instance, requiring a succeeding owner to assume, in respect to taxation, the place of his predecessor (i.e., to "step into his shoes") is a legal fiction used for preserving the government's interest in receiving a portion of accumulated gains even if not subject to current taxation. In upholding the right of Congress to require a donee of stock, who sells it, to pay income tax on the difference between the selling price and the value when the donor (not the donee) acquired it, the Supreme Court stated in a unanimous opinion that the donee takes a gift from the donor "subject to the right of the sovereign to take part of any increase in its value when separated through sale or conversion and reduced to his possession." The Court rejected the formalistic view that the gift in the donee's hands was a capital asset (including any antecedent appreciation) when received and, thus, was free from the right of the government to tax : "To accept the view urged in behalf of the petitioner undoubtedly would defeat, to some extent, the purpose of Congress to take part of all gain derived from capital investments. To prevent that result and insure enforcement of its proper policy, Congress had power to require that for purposes of taxation the donee should accept the position of the donor in respect of the thing received. And in so doing, it acted neither unreasonably nor arbitrarily." *Taft v. Bowers*, 278 U.S. 470, 482-83 (1929). The Court noted that the government's inchoate interest explains why the price of stock often is discounted to account for the burden it carries of income tax eventually being assessed if and when accumulated profits are distributed. *Id.* at 483. See also *Helvering*

Continued

Modern view of "realization"

The vast majority of commentators view *Macomber* as effectively overruled, or the validity of the holding so restricted to its facts, such that the concept of realization no longer has constitutional significance. These commentators view the issue of realization as simply one of administrative convenience, an important consideration for Congress in determining taxable events (and perhaps politically inevitable in most circumstances[138]) but not a constitutional limitation on Congress' taxing authority.[139] Even though there is a continued sense that realization is intimately tied to the meaning of "taxable income," the general scholarly consensus is that *Macomber* has long since ceased to be important as a source of a definition of "income" or as constitutional interpretation. See, e.g., White "Realization, Recognition, Reconciliation, Rationality and the Structure of the Federal Income Tax System," 88 *Mich. L. Rev.* 2034, 2048 (1990)("There seems to be widespread sentiment among tax commentators, however, that Congress could, if it chose to, tax appreciation currently.").[140]

Although a tax system that purports to tax income need not directly define "income," the system must determine what is potentially subject to tax (meaning dividing the world into those items that might possibly be taxed and those items that could not be). Once something has been deemed potentially taxable, a system has three responses: "[the system] can tax the item or amount currently, [the system] can tax it later, or can exempt it from taxation." White, *supra*, 88 *Mich. L. Rev.* at 2040. Using this conceptual approach when examining the U.S. tax system, the conclusion that the expatriation tax proposals are improper is premised on the view that, when a person who is expatriating holds onto his property, there is no "it"—i.e., there simply is no income—to be taxed

v. National Grocery Co., 304 U.S. 282, 286-87 (1938)(upholding the validity of the accumulated earnings tax imposed on corporations, and noting that Congress in raising revenue has "incidental power to defeat obstructions to that incidence of taxes which it chooses to impose").

[138] But see Shakow, "Taxation Without Realization: A Proposal for Accrual Taxation," 134 *U. Pa. L. Rev.* 1111 (1986)(concluding that realization concept is not required for constitutional or policy reasons).

[139] See, e.g., Surrey, *supra*, at 792 (question of when a realization event should be deemed to occur cannot be answered by constitutional analysis but "must be in practical terms and must be shaped by considerations of administrative convenience and taxpayer convenience"); Bittker, *supra*, at 1-24; M. Chirelstein, *Federal Income Taxation*, para. 5.01 at 68-69 (5th ed. 1988); M. Graetz, *Federal Income Taxation* at 201 (1985); H. Simons, *Personal Income Taxation* at 198-199 (1938)(describing constitutional realization notion as an "utterly trivial issue" that has resulted in a "mass of rhetorical confusion which no orderly mind can contemplate respectfully"); Andrews, "A Consumption-Type or Cash Flow Personal Income Tax," 87 *Harv. L. Rev.* 1113, 1140-1148 (1974); Griswold, *Cases and Materials on Federal Taxation*, at 142 (5th ed. 1960); L. Hart Wright, "The Effects of the Source of Realized Benefits upon the Supreme Court's Concept of Taxable Receipts," 8 *Stan. L. Rev.* 201 (1956); Kahn, "Accelerated Depreciation—Tax Expenditure or Proper Allowance for Measuring Net Income?," 78 *Mich. L. Rev.* 1, 7-9 (1979); Musgrave, "In Defense of an Income Concept," 81 *Harv. L. Rev.* 44, 49 (1967); Sneed, *The Configurations of Gross Income* at 125 (Ohio St. U. Press 1967)(if any "rusty remnant" of Macomber remains, it should be "consigned to the junk yard of judicial history"); N. Cunningham and D. Schenk, "Taxation Without Realization: A 'Revolutionary' Approach to Ownership," 47 *Tax L. Rev.* 725, at 741 (1992)("realization requirement only informs *when* income generally should be reported; it does not define what is income"); Isenbergh, *supra*, at 1067.

[140] Professor White concludes that the so-called unrealized appreciation of an asset is potentially taxable within the U.S. income tax system, and thus could be taxed currently, but by not recognizing this gain in most cases, the income tax system leaves open both the possibility that the gains will be taxed later and the possibility that they will be excluded altogether. The end result of this approach is consistent with the conclusion reached 50 years earlier by Surrey (see footnote 134 *supra*), although under Surrey's analysis, Congress theoretically would not decide to tax "unrealized" gains but would, by selecting a taxable event, be declaring by law the moment of "realization" even though no sale or exchange of property might be involved.

now or later. Under this view, "it"—which is the world of things potentially subject to U.S. tax—is defined narrowly to include only gains that are viewed as realized by sale or other transfer of property to another person (and does not include gains with respect to property, even when the jurisdictional attributes are being altered, if such property continues to be owned by the same person). In contrast, the view that the expatriation tax proposals are proper is premised on the view that the "it" of the U.S. tax systems (viewing the income and estate and gift tax systems as complementary) that is subject to tax now or later, or to specific exemption from tax, generally includes all economic income in the Haig-Simons sense.[141] This latter view is consistent with the scholarly consensus as to the scope of the Sixteenth Amendment. Under this view, accumulated gains are potentially subject to tax, and the "realization" concept is relevant to the nonconstitutional, policy issues of whether to tax the gains now or later.[142] Thus, the argument goes, even if the realization rules of the Code generally result in accrued gains being taxed later when there is no disposition of the underlying property, Congress has the constitutional power to modify these rules so that tax will be imposed sooner rather than later when gains that are potentially subject to tax are effectively being removed from U.S. tax jurisdiction.

Specific Code sections that are exceptions to general realization rules:

The Internal Revenue Code currently includes several provisions that dispense with a realization requirement in the traditional sense that the concept has been used. For example, on the loss side, commentators have long debated whether the depreciation deductions allowed by the Code reflect accrual notions that are con-

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[141] The following is the Haig-Simons definition of income that is much favored by economists: "Personal income may be defined as the algebraic sum of (1) the market value of rights exercised in consumption and (2) the change in the value of the store of property rights between the beginning and end of the period in question." H. Simons, *Personal Income Taxation* 50 (1938).

[142] Policy considerations frequently mentioned as supporting a realization requirement include: (1) administration—i.e., the administrative burden of constant accretion tax reporting; (2) valuation—i.e., the difficulty of repeatedly determining valuation absent a sale of property; and (3) liquidity—the potential hardship to taxpayers of obtaining funds to pay tax on accrued gains. Certainly, Congress needs to take such considerations into account when designing rules that could tax gains absent a sale of property. Nevertheless, there is virtual unanimity among commentators that such policy considerations generally do not have constitutional implications. See Cunningham and Schenk, *supra* at 740-743. *Id.* To some extent, the policy considerations can be addressed through the rules of tax collection, even though a tax liability theoretically attaches to an accrued gain at an earlier point in time. For instance, a tax system could be designed which, although theoretically based on an accretion tax model, could require current payment of tax only with respect to those assets that are easily valued and marketable. Actual payment of tax with respect to other assets could be deferred with interest until there is an actual transfer. See Shakow, *supra*, at 1122-23; Isenbergh, *supra* at 1067 (drawing analogy to present-law PFIC rules in section 1291); Fellows, "A Comprehensive Attack on Tax Deferral," 88 *Mich. L. Rev.* 722 (1990)(possible to design a system that taxes property accretion at transfer, but with an interest charge for the earlier years' inchoate taxes, based on the assumption that the change in value accrued ratably). Commentators have also noted that the reporting and valuation burdens caused by moving toward a system of accrual taxation may be offset (at least to some extent) by the benefits resulting from elimination of various tax planning devices and attendant controversiesthat follow from a strict realization requirement and the economic inefficiencies that result if the system encourages taxpayers to avoid transfers that yield gain but carry out as soon as possible transfers that yield a loss. See Shaviro, *supra*, at 4-5; Shakow, *supra*, at 1114 (tax system that deviates from Haig-Simons definition of income encourages inefficient economic activity); Evans, "The Realization Doctrine After *Cottage Savings*," (December 1992) *Taxes* at 897 (realization requirement results in "tax arbitrage").

trary to the realization principle.[143] On the gain side, the exceptions to the realization notion are more narrowly drawn. The percentage-of-completion method of accounting required for some long-term contracts can be viewed as contrary to the *Macomber* concept of realization.[144] Sections 1271-1275 set forth the rules for taxing original interest discount ("OID"), considered by many a form of unrealized income. Section 1256 taxes what historically have been considered unrealized gains, by requiring mark-to-market taxation of certain regulated futures contracts, foreign currency contracts, nonequity options, and dealer equity options. In *Murphy v. United States*, 992 F.2d 929 (9th Cir. 1983), the court rejected the taxpayer's argument that the section 1256 mark-to-market regime was unconstitutional because it taxes unrealized gains. This argument was dismissed on the ground that Congress did not act arbitrarily when it decided that "the gains inherent in [futures contracts] are properly treated as constructively received." The court declined to address the broader issue of whether Congress could tax the gains inherent in all capital assets prior to realization or constructive receipt. Instead, the court accepted the government's constructive receipt rationale because the taxpayer was allowed to draw against the daily gains in his account even though there might be no disposition of the futures contracts themselves. The fact that the investment that produced the economic gains remained at risk (which the court noted is likewise true of loaned or deposited funds) was viewed as inconsequential. 992 F.2d at 931. In 1993, Congress adopted a similar mark-to-market regime for determining taxable income of certain securities dealers (sec. 475). Enactment of section 475 did not cause an extended debate regarding the constitutionality of the regime.

Specific provisions added to the Code governing persons or property located in a foreign country but having a nexus to the United States have also dispensed with the formal realization notion of *Macomber*. Beginning with the foreign personal holding company rules (sec. 551-558, enacted in 1937) and including the controlled foreign corporation rules (secs. 951-64, enacted in 1962) and the passive foreign investment company rules (sec. 1291, enacted in 1986), the Code has taxed certain domestic shareholders on undistributed earnings of foreign corporations that meet certain characteristics. These provisions have been upheld against constitutional challenges. In *Eder v. Commissioner*, 138 F.2d 27 (2d Cir. 1943), the court upheld the constitutionality of the foreign personal holding company rules, in a factual setting where the foreign company was prevented by Columbian law from paying a dividend (above a certain amount) to the U.S. taxpayer: "We do not agree with taxpayer's argument that inability to expend income in the United States, or to use any portion of it in payment of income taxes necessarily precludes taxability. " 138 F.2d at 28. The court recognized that the operation of the statutory rules to the facts at hand "may

[143] See, e.g., Shaviro, *supra*, at 11 and 13 (noting that some commentators argue that realization, in the sense of a transfer, is dispensed with in situations of high certainty regarding whether gain or loss, not yet converted to cash, has in fact incurred); Cunningham and Schenk, *supra*, at 742 ("It is reasonable to inquire why an anticipated decline in value should be taken into account for tax purposes, but not an equally (possibly even more) likely increase in value.")

[144] Evans, "The Evolution of Federal Income Tax Accounting—A Growing Trend Towards Mark-to-Market?," 67 *Taxes* 824, 833 (1989).

be harsh," but "[i]nterpreting the statute to bring about such a consequence does not render the statute unconstitutional; the Congressional purpose was valid and the method of taxation was a reasonable means to achieve the desired ends."[145]

The controlled foreign corporation rules enacted in 1962 were upheld in *Garlock Inc. v. Commissioner*, 489 F.2d 197 (2d Cir. 1973), *cert. denied*, 417 U.S. 911 (1974), against a challenge that it was unconstitutional to require the taxpayer to include in his taxable income a prorata share of the corporation's "subpart F income," regardless of whether or not that income has been distributed to shareholders. The Second Circuit ruled that this constitutional argument "borders on the frivolous in the light of this court's decision in *Eder v. Commissioner*." 489 F.2d at 202. In both the *Eder* and *Garlock* decisions, the Second Circuit dismissed the constitutional realization argument without even citing the *Macomber* decision. Similarly, the controlled foreign corporation rules again were upheld in *Estate of Whitlock v. Commissioner*, 59 T.C. 490 (1972), *aff'd in part and rev'd in part*, 494 F.2d 1297 (10th Cir.), *cert. denied*, 419 U.S. 839 (1974), where the Tax Court both distinguished *Macomber* as applicable to accumulated rather than current earnings and observed that "the continuing vitality of the *Macomber* doctrine is in considerable question." *Id.* at 509, n.21.

The proposals may satisfy any remaining constitutional realization requirement

Taken as a whole, the above-described judicial decisions and legal commentary represent a substantial line of authority for the position that the concept of realization is not constitutionally mandated.[146] However, assuming that the realization notion is of constitutional dimension, the question follows whether the expatriation tax proposals could be characterized as imposing tax at the moment of a taxable event that satisfies constitutional standards.[147] In other words, even if an across-the-board tax on accre-

[145] A footnote in the Supreme Court's *National Grocery* decision in 1938 (which upheld the accumulated profits tax imposed on corporations) suggested acceptance of the validity of the foreign personal holding company rules enacted the preceding year. 304 U.S. at 288 n.4.

[146] If *Macomber* is viewed as effectively overruled, this would not be the only Supreme Court tax decision from the 1920s that no longer is valid. See *United States v. Carlton*, 114 S.Ct. 2018, 2024 (1994)(upholding retroactive tax law change and noting that 1920s cases that invalidated retroactive tax changes on due process grounds were decided during an era characterized by exacting review of economic legislation under an approach that "has long since been discarded"); William O. Douglas, "Stare Decisis," 49 *Colum. L. Rev.* 745, 743-44 (1949)(discussing numerous early Supreme Court tax cases that were later overturned by the Court).

[147] Because the realization notion applies for constitutional purposes, if at all, only in cases involving "direct" income taxes and not "indirect" excise taxes, the question also arises whether one could characterize the expatriation tax proposals as an indirect, excise tax imposed on the act of expatriation, the amount of such tax measured by concepts that are similar to those used in the Federal income tax. See *Flint v. Stone Tracy Co.*, 220 U.S. 107 (1911), where, prior to enactment of Sixteenth Amendment, the Court sustained a corporate income tax as an excise tax "measured by income" imposed on the privilege of doing business in corporate form. See also Surrey, *supra*, 35 *Ill. L. Rev.* at 793 ("the income tax on most of these items can be turned into an indirect excise tax by the addition of a few words"); Bittker, *supra*, at I-24; Shaviro, *supra*, 48 *Tax L. Rev.* at 1-2. Re-casting the expatriation tax proposals as an indirect, excise tax would be a conceptual device to side-step the constitutional realization issue. At the same time, such a characterization of the proposals would more squarely present problems under international law because, in theory, the proposed tax would not be "imposed" on some economic gains "triggered" by the act of expatriation but, instead, would be "imposed" on the act of expatriation itself and "measured" by certain economic gains. By so viewing the expatriation tax proposals, it would be easier to refer to them as "exit taxes" imposed on the act of expatriation rather than

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tions in wealth (i.e., a deemed sale rule generally governing all capital assets whenever there are changes in value but not necessarily any other events) were assumed to violate the Constitution, the question must be addressed whether the act of expatriation results in a sufficient change in the attributes of certain property owned by the expatriate such that a "disposition" of such property may be deemed to have occurred.

There is no definitive answer to this question, because "realization" has remained a rather ill-defined concept. As discussed earlier, the Supreme Court clearly has abandoned the *Macomber* definition of "income" requiring a severance of profit from the underlying capital. This has led commentators to continue to struggle with realization's elusive "true" meaning. As Professor Shaviro recently observed: "Realization refers to the occurrence of a taxable event, but the term does not dictate, even as a matter of ordinary usage, what that occasion should be." [148] It is clear that the notion of "realization" is not confined by the Constitution to ordinary sales of property for cash or other consideration. See *United States v. Davis*, 370 U.S. 65 (1962)(upholding imposition of tax on taxpayer's transfer of appreciated stock to his former wife in settlement of her interest in the property, even though the taxpayer received only intangible benefit of release of former wife's interest that could not be accurately measured).[149]

A flexible definition of "realization" could be supported as part of broad power of Congress to levy taxes and define the class of objects to be taxed. See *Barclay & Co. v. Edwards*, 267 U.S. 442, 450 (1924). However, even assuming that the constitutional realization notion is synonymous with the phrase "sale or other disposition" from Code section 1001, this phrase is also vague enough to lead to debate whether a "realization" always requires the transfer of the ownership of property from one entity to another.[150] Stated in a different way, must one or more of the "bundle of sticks" defining the ownership of property be transferred for a realization event to occur, or is it sufficient if there is a change in the character (or "color") of the sticks? Professor Shaviro notes that the realization concept could be defined broadly so that the receipt of loan proceeds could be treated as a kind of realization event, to the extent of any appreciation of the taxpayer's assets or to the extent the amount borrowed exceeds the basis of the taxpayer's noncash assets (perhaps limited to assets pledged as loan security).[151] In a sense, this conceptualization underlies the Ninth Circuit's decision in *Murphy*, *supra*, where it was held that Congress could treat the

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a "settling up" on potential tax liabilities at the time of expatriation. See discussion *infra* of international law issues raised by the proposals.

[148] Shaviro, *supra*, at 11-12.

[149] In *Davis*, the Court stated that there was no doubt that Congress "intended that the economic growth of this stock be taxed" and that the issue "is simply when is such accretion to be taxed." 370 U.S. at 68. In response to the *Davis* decision, Congress enacted section 1041 (which shields divorce property settlements from tax liability) to provide nonrecognition treatment for otherwise realizable income.

[150] See *Helvering v. Griffiths*, 318 U.S. at 393 (no exemption from taxation where economic gain is enjoyed by some event other than the taxpayer's personal receipt of money or other property). Commentators have noted that some of the nonrecognition provisions of the Code have allowed the architects of the Code to finesse difficult realization issues by postponing the question of whether income has been "realized" until it is no longer difficult. White, *supra*, at 2044, n. 24.

[151] Shaviro, *supra*, at 12, 39-41.

taxpayer as if he had constructively received the gains in his futures contracts because he was permitted to draw against such gains. 992 F.2d at 931. As another example, proposed regulations issued by the Treasury Department under Code section 1001 provide that a significant modification in the terms of a debt instrument will be treated *as if* the original instrument was exchanged for the modified instrument.[152] Thus, under the proposed regulations, a taxable exchange is deemed to have occurred if there is any significant alteration of a legal right or obligation of the issuer or holder of a debt instrument (including a change in collateral securing the note). Such a modification could be conceptually viewed as a change in the legal attributes (or "color") of the bundle of sticks even though the sticks do not change hands. So viewed, a parallel could be drawn to the deemed realization that would result under the expatriation proposals due to a change in the jurisdictional attributes of some assets owned by an individual at the time he or she renounces U.S. citizenship.

The few commentators who view *Macomber* as having continuing constitutional validity acknowledge that the concept of realization is not entirely rigid. Arguing that the Supreme Court has never abandoned *Macomber*, Professor Ordower writes:

> [A]lteration of the taxpayer's aggregate rights with respect to the property is a condition of realization. In simplest terms, a change in the value of the taxpayer's property without a corresponding change in the taxpayer's relationship to the property is not realization because the Sixteenth Amendment does not view a mere change in value as income. The constitutional concept of income is narrower than the Haig-Simons formulation of the economic concept. On the other hand, a change in the taxpayer's relationship to the property resulting in alteration of the taxpayer's rights in the property is realization. Whenever taxpayer's rights change, the constitutional barrier to taxation dissolves, and Congress is free to tax or not tax as it chooses. (13 *Va. Tax Rev.* at 29-30)

In addition, Ordower acknowledges that there apparently is an exception to any constitutional realization requirement in cases involving offshore operations and attempts by Congress to prevent tax evasion.[153] This view was previously expressed during the deliberations that led to Congress' passage of the controlled foreign corporation rules in 1962. See Memorandum to Secretary of the Treasury Douglas Dillon from Robert H. Knight, dated June 12, 1961 (concluding that proposal to include in gross income of U.S. shareholders undistributed profits of a controlled foreign corpora-

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[152] Prop. Treas. Reg. sec. 1.1001-3. Some commentators view the *Cottage Savings* decision as supporting the validity of the proposed regulations, even though *Cottage Savings* involved an actual, rather than deemed exchange, of instruments, and the issue was whether the instruments exchanged were materially different. See Evans, "The Realization Doctrine After *Cottage Savings*," (December 1992) *Taxes* 897, at 902.

[153] 13 *Va. Tax Rev.* at 9, 18 ("The legislative history of the foreign personal holding company provisions justifies breaching the constitutional barrier to a shareholder level tax to prevent the proliferation of foreign 'incorporated pocketbooks' which lie beyond the taxing jurisdiction of the United States.") See also Norr, "Jurisdiction to Tax and International Income," 17 *Tax L. Rev.* 431, 453-54 (1962)(finding persuasive the contention that the CFC rules are constitutional under both Congress' taxing powers and its power to regulate foreign commerce).

tion was a valid exercise of Congress' constitutional power to regulate foreign commerce; proposal can be supported on ground that income should be deemed to be constructively received in order to prevent tax avoidance or on broader ground that *Macomber* has been effectively overruled); Joint Committee on Internal Revenue Taxation, *Comparison of Existing Law with President's Proposals on Taxation of Income from Foreign Subsidiaries* (May 3, 1961)(noting that the foreign personal holding company rules are an exception to the general *Macomber* principle but have been held valid in *Eder* and such rules deal with a "relatively clear tax evasion area").[154] Under this approach, even if there is a general constitutional realization requirement, this requirement—like most constitutional rules—is not absolute. Thus, it could be argued that the expatriation tax proposals are constitutionally valid because a deemed sale is provided for only when the taxpayer's (and Government's) relationship to property is altered due to a change in the jurisdictional attributes of the property for tax purposes and because the deemed sale rule would prevent tax evasion. Because every presumption favors the constitutional validity of a disputed tax statute, Mertens, *Law of Federal Income Taxation,* vol. 1, at sec. 4.01, there is a reasonable likelihood that the debate over whether a change of jurisdictional attributes of property is a sufficient realization event (and not merely a matter of form with little or no substantive effects as was found with the stock dividend in *Macomber*) would be resolved in favor of upholding the constitutionality of the statute. Cf. *Helvering v. Griffiths*, 318 U.S. at 393 (referring to the foreign personal holding company rules as a "practical necessity" and to the "inherent power" of the Government to protect itself from devices to avoid and evade its laws).[155]

It is true that the expatriation tax proposals would tax the built-in gain of some assets that already are physically located offshore at the time that the taxpayer renounces U.S. citizenship. Indeed, the proposals could result in the imposition of tax in what could be considered to be "non-abusive" cases, because the assets in-

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[154] In that publication, the staff of the Joint Committee on Internal Revenue Taxation suggested that, in contrast to the foreign personal holding company rules enacted in 1937, which dealt with a relatively clear tax evasion area, there "may be some question as to whether all the provisions proposed [by President Kennedy in 1961] would be within the constitutional powers of the Congress." Another memorandum from Colin F. Stam, Chief of Staff of the Joint Committee on Internal Revenue Taxation to the Chairman of the Committee on Ways and Means, dated May 4, 1961, indicates that the basis for the Joint Committee's constitutional concern was that, while the foreign personal holding company rules were carefully tailored in 1937 to be no more drastic than required to prevent further use of one of the "most glaring loopholes" that led to tax evasion, the President's 1961 proposal was overbroad and would apply to some cases where it would be difficult or impossible to describe as involving the exploitation of a "glaring loophole." [1962 Act legislative history, vol 1, at 312]. See also Separate Views of the Republicans on H.R. 10650 [the 1962 Act] at B21 ("[C]ounsel for the Joint Committee on Internal Revenue Taxation has advised the committee that Congress cannot constitutionally tax shareholders on the undistributed income of foreign corporations, except in cases where such taxation is reasonably necessary to prevent evasion or avoidance of tax.")

[155] In a letter to the Senate Finance Committee dated March 22, 1995, Professor Ordower writes that the expatriation tax proposals would "violate the constitutional limitation on the definition of income identified in *Macomber,*" which the Supreme Court has yet to overrule. Ordower writes that, although "taxpayers have tolerated deviation from this constitutional limitation historically in certain types of transactions, including foreign personal holding companies, controlled foreign corporations, and the marking-to-market of commodities positions," the expatriation tax proposals would be a direct attack on *Macomber*:

[S]uch taxation without realization raises far more fundamental issues than previous departures from the constitutional norm. It goes beyond earlier policy justifications such as tax avoidance through foreign personal holding companies and liquidity-based taxation of commodities positions. Here the proposed provision reaches the heart of unrealized gain.

volved may *never* have been physically located in the United States. In such a case, it might seem anomalous to employ the legal fiction that gain is "realized" because the expatriate's assets are effectively being transferred offshore. However, the Supreme Court long ago upheld the validity under both the Constitution and principles of international law of deeming property that never was physically located in the United States to be within the tax jurisdiction of the United States for the sole reason that the owner is a United States citizen. *Cook v. Tait*, 265 U.S. 47 (1924)(upholding authority of United States Government to tax income from property located at the residence of a citizen residing abroad); *United States v. Bennett*, 232 U.S. 299 (1914)(upholding imposition of tax on the use of foreign-built yacht, owned or chartered by U.S. citizen, even if never used within geographic limits of the U.S.). The fact that certain property was never physically located within the geographic territory of the United States would not appear to be a bar to deeming such property to be transferred to a new legal situs due to the owner's act of expatriation.[156] The change in the jurisdictional attributes of property would not necessarily make valuation of such property any easier, but under Surrey's analysis (see footnote 134 *supra*) could provide the conceptual basis to statutorily deem that a "realization" has occurred.[157] The change in the taxpayer's and Government's relationship to such property, which would be viewed as being transferred to a new legal situs, would mark the end of the deferral of tax on built-in gains. In this way, the proposed taxing schemes could be viewed as providing an analog for personal property to the present-law rule contained in section 367, which ends tax deferral when business property is transferred to a foreign corporation (see Part II.A.4.d *supra*). Even though the rules of section 367 are referred to as exceptions to general "nonrecognition" treatment—as opposed to being special "realization" rules—the net effect of both section 367 and the expatriation tax proposals is to prevent tax deferral from being converted into permanent tax-free status.[158] As with the foreign personal holding company rules enacted in 1937 (which are viewed as remedying "tax evasion" by considering not only the tax otherwise escaped by the shareholder but the accumulated profits tax escaped by the foreign corporation), looking at the aggregate income, estate, and gift tax burden that is escaped when an individual renounces his citizenship may provide a sufficient "tax evasion" rationale that satisfies any surviving constitutional remnants of *Macomber*.

[156] Consistent with this conceptual approach, the S. 700 and H.R. 1535 provide that with respect to those assets that a taxpayer elects to have remain within the jurisdiction of the U.S. tax system (by consenting to continue to be treated as a citizen with respect to such assets), a deemed realization event will not be statutorily mandated.

[157] A comparison can be drawn to the significant alteration of legal attributes of assets that was found to have occurred in the 1920s reorganization cases of *United States v. Phellis*, 257 U.S. 156 (1921) and *Marr v. United States*, 268 U.S. 536 (1925)(both cases discussed by the Supreme Court in *Cottage Savings*), not because of an actual physical transfer of the assets but due to a change in their legal situs brought about when the corporations changed their State of incorporation.

[158] See Prepared Statement of Professor Paul B. Stephan III, University of Virginia Law School, on Section 5 of H.R. 831, at 3 ("An analogous provision is section 367 of the Code, which denies nonrecognition treatment in certain corporate reorganizations if the recipient of appreciated property is a foreign corporation. I never have heard the argument that [this] provision imposes an impermissible burden on the right of a domestic corporation to export its capital.")

Due process concerns

In general.—Tax provisions must satisfy the requirements of constitutional provisions other than the Sixteenth Amendment. The Fifth Amendment to the Constitution forbids the Federal Government from depriving persons of property without due process of law. In the case of *Brushaber v. Union Pacific R.R.*, 240 U.S. 1 (1916), the Supreme Court held that although the due process clause of the Fifth Amendment normally does not restrict Congress' taxing power or the classifications that may be used in a tax regime, the courts can intervene in extreme cases if

> the act complained of was so arbitrary as to constrain to the conclusion that it was not the exertion of taxation but a confiscation of property, that is, a taking of the same in violation of the Fifth Amendment, or, what is equivalent thereto, was so wanting in basis for classification as to produce such a gross and patent inequity as to inevitably lead to the same conclusion. (240 U.S. at 24-25)

Thus, in theory, the test under the due process clause for tax legislation generally is the same as for other economic regulation[159] : Did Congress act in an arbitrary or irrational manner? Bittker, *supra*, at 1-27; Mertens, *supra*, at sec. 401. In practice, however, it is extremely difficult to use the due process test to invalidate any economic regulation passed by Congress, but this is particularly so with respect to tax legislation. Economic regulation in general is given a presumption of validity by the judiciary; and the courts view Congress as having "especially broad latitude in creating classifications and distinctions in the tax statutes." *Regan v. Taxation With Representation of Washington*, 461 U.S. 540, 547 (1983). Because no Federal tax statute has ever been found to lack a rationale basis or to contain an improper classification under the due process clause (other than some early cases involving retroactive estate and gift taxation[160]), it is difficult to describe the type of taxing scheme that could be found to violate the due process clause. It is clear, however, that much more is needed than a showing that a tax regime affects some persons more oppressively than others. In *Brushaber*, the Court rejected arguments that the income tax provisions of the Tariff Act of October 3, 1913, improperly discriminated against different types of entities and income. The Court held that a due process violation cannot be established merely because it is shown that the classification is "unwise" or results in "injustice." 240 U.S. at 26. In view of *Brushaber* and subsequent decisions, commentators uniformly agree that the proper focus under a due process analysis of a tax statute is whether the statute is so arbitrary and outside the zone of possible rationale debate that the only reasonable conclusion is that a "taking" has occurred. In applying this loose standard, Congress is accorded substantial flexibility and a presumption that it acted rationally. Mertens,

[159] See, e.g., *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976)(upholding against due process challenge retroactive application of economic regulation, under which coal mine operators were made liable for benefits for former employees).

[160] These early cases are now of questionable validity. *United States v. Carlton*, 114 S.Ct. 2018, 2024 (1994)(upholding retroactive change to estate tax provisions and noting that 1920s cases that invalidated retroactive tax changes on due process grounds were decided under a standard of review that "has long since been discarded").

supra, at secs. 401, 406, and 407. As Professor Bittker observes: "[E]ven a Supreme Court confident of its power to distinguish between reasonable and arbitrary behavior in other statutory areas has hesitated to act as a referee of tax legislation." Bittker, *supra*, at 1-28. A legislative tax classification will not be set aside if any state of facts justifying a rational relation of the classification to a legitimate end is demonstrated to, or perceived by, the judiciary. *United States v. Maryland Savings Ins. Corp*, 400 U.S. 4, 6 (1970).

In rejecting constitutional due process challenges, Courts have upheld as a reasonable exercise of Congressional taxing power numerous classifications made for Federal income tax purposes, such as distinctions between single and married taxpayers and domestic and foreign corporations. See Bittker, *supra*, at 1-28 (and cases cited therein). See also *Apache Bend Apartments, Ltd. v. United States*, 964 F.2d 1556 (5th Cir. 1992), *aff'd on reh'g*, 987 F.2d 1174 (5th Cir. 1993)(upholding transition, or so-called "rifle-shot," provisions contained in the Tax Reform Act of 1986 against Fifth amendment/equal protection challenge; tax legislation is presumed constitutional and invalidated on Fifth Amendment grounds only if it lacks a rational basis). Most due process challenges of tax legislation are regarded by the courts as "frivolous." Mertens, *supra*, at sec. 4.01. Thus, the consensus among commentators is that the reservation of residual judicial function for extreme tax cases referred to in *Brushaber* has become "virtual dead letter." Bittker, "Constitutional Limits on the Taxing Power of the Federal Government," 41 *Tax Lawyer* 3, 11 (1987).[161]

The overall taxing scheme envisioned by the expatriation tax proposals would not appear to lead to a colorable constitutional challenge under the due process clause of the Fifth Amendment. Putting aside the *Macomber* issue (which involves the Sixteenth Amendment), the general rule of the proposals to deem assets to be sold at the time of expatriation does not seem outside the zone of reasonable debate. As demonstrated by the congressional hearings on the matter and by this Report, there are rational arguments on both sides of the issue whether the expatriation tax proposals are an appropriate response to the problems of present law and practice. Moreover, even though the proposals arguably introduce novel realization concepts based on the taxpayer's change of status that are questionable as a policy matter, particularly with unmarketable assets, the Code currently contains special realization and recognition provisions that are considered not only rationale but desirable on policy grounds in their attempt to deal with similar problems of preventing tax deferral from being converted into tax exclusion when property or activities are located outside the geographical limits of the United States. See Isenbergh, *supra*, at 1064 (goal of subpart F special realization rules enacted in 1962 was to "restore a measure of neutrality to investment decisions across national boundaries"). The numerous policy issues raised by the potential overall operation and impact of the expatriation tax

[161] Bittker notes that, because of the very complexities of Federal income tax law, and the fact that tax practitioners regularly describe distinctions of the Code as "unjustified" or "inequitable" or even "absurd," the courts have been reluctant to intervene on due process grounds because the tax law is "so full of debatable distinctions that any attempt to police the Code in the name of substantive due process would lead them from one provision to another in a never-ending process of judicial review." 41 *Tax Lawyer* at 11-12.

proposals clearly are substantial and debatable, but any rational resolution of these policy issues by Congress probably would be beyond challenge under the due process clause. See *Newark Fire Ins. Co. v. State Board of Tax Appeals*, 307 U.S. 313 (1938)("Wise tax policy is one thing; constitutional prohibition quite another.").

Contingent interests.—Even if a taxing scheme does not violate the due process clause on its face, there still may be, in theory, a question whether the taxing scheme violates due process as applied in a particular factual setting. See *Connolly v. Pension Benefit Guaranty Corp*, 475 U.S. 211, 224 (1986); *Concrete Pipe & Products, Inc. v. Construction Laborers Pension Trust*, 113 S.Ct. 2264 (1993).[162] Such an "as-applied" due process challenge could arise under the expatriation tax proposals in the case where a beneficiary of a trust who has merely a contingent interest in the trust is being deemed to have "income" under the proposals—i.e., a current tax liability would be imposed based on the present value of a *possible* future distribution that the beneficiary may or may not ever receive. (See Part V.H.2.) In such a case, it may be contended that it is irrational to say that the beneficiary, at the time of expatriation, has any economic gain from the contingent interest, which under the proposals nevertheless could be deemed to constitute current taxable "income" to the expatriate. In such a case, the individual who wishes to renounce his citizenship may be subjected to the punitive choice of relinquishing his contingent future interest (assuming that is possible) or paying a potentially significant tax on what could be viewed as "phantom income." Such an application of the expatriation proposals could be viewed as irrational and, thus, a theoretical "taking" in violation of the due process clause. This argument could arise, even though the deemed sale rule of the proposals may pass constitutional muster when applied to built-in gains of assets over which the expatriate exercises some dominion or control.[163]

In essence, the potential as-applied due process challenge just described would amount to a claim that, under certain facts involving contingent future interests, it is irrational—or simply "despotic," see footnote 133 *supra*—to classify the individual as having received "income." Such a claim would present a somewhat novel question under the due process clause.[164] Since the *Macomber* deci-

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[162] As stated in Ways and Means Committee Print entitled *Financing UMWA Coal Minor "Orphan Retiree" Health Benefits*, published September 3, 1993 (WMCP: 103-19) at 84:

Bear in mind, however, that a facial-taking analysis . . .asks only whether the challenged government action necessarily must attain the constitutional threshold for a taking in all imaginable applications. If not, a facial challenge must be rejected, as it was in *Connolly*. There remains the possibility that in specific circumstances, involving specific companies, an as-applied taking action may present circumstances that tip the balance more in the plaintiff's favor. However, to ground a successful regulatory taking claim, such circumstances must consist of more than a severe economic impact on the as-applied plaintiff.

[163] The Treasury Department relies on a "facts-and-circumstances" approach for determining whether a particular trust interest is so remote or contingent that it should be disregarded for purposes of imposing tax at the time of expatriation. In addition, the Treasury Department refers to provisions that would allow the IRS to defer the payment of tax, stating that "these provisions should be reasonably satisfactory to those very small number of taxpayers who have liquidity problems." See letter from Leslie B. Samuels, Assistant Secretary of the Treasury (Tax Policy), dated May 2, 1995 (included in Appendix G).

[164] The question whether a person who receives a mere contingent interest can be deemed to have taxable "income" is, in a sense, the mirror image of the issue presented in cases where the Supreme Court held that a person who exercised possession and control over monies (even though that person had no bona fide legal claim or may be adjudged liable to return its equivalent in the future) nonetheless derives "readily realizable economic value" that may be subject to tax under the Sixteenth Amendment. See *James v. United States*, 366 U.S. 213, 219

sion, the judiciary has consistently bowed to legislative decisions in defining the term "income." Bittker, *supra*, at 1-26.[165] Moreover, the complexities of valuing contingent future interests would probably deter most courts from delving too deeply into the issue of the reasonableness of deeming an individual to have current economic gain that has come into fruition in such a case.[166] Nonetheless, the as-applied due process challenge that could potentially arise under the expatriation tax proposals would appear to be distinguishable from reported decisions such as *Eder*, *supra*, where the Second Circuit upheld the constitutionality of a deemed dividend distribution to a U.S. shareholder in a factual setting where hardship was caused because an actual distribution was blocked by Columbian law. In *Eder*, the court specifically noted that the taxpayer could have invested or spent the "blocked" funds in Columbia and, thus, could have received "economic satisfaction." 138 F.2d at 28. In contrast, it is difficult to say (at least in some factual settings) that the beneficiary of a contingent interest in a trust has any "economic satisfaction" at the time that tax could be imposed under the expatriation tax proposals. Although mathematical precision as to a liability imposed is not required, one could argue that, in a particular factual setting, the economic impact of the expatriation tax regime constitutes a "taking" because the tax imposed is simply not proportionate in any reasonable sense to the true economic position of the taxpayer at the time the tax is imposed. Cf. *Connolly v. Pension Benefit Guaranty Corp.*, 475 U.S. at 226 (rejecting due process challenge, in part, because no showing that the retroactive liability imposed on the employer will be out of proportion to its experience with the employee pension plan). However, S. 700 and H.R. 1535 would appear to avoid this potential as-applied constitutional challenge, because under that bill, an individual could elect to continue to be treated as a U.S. citizen with respect to his interest in a trust, and would be subject to U.S. tax in the future only if and when—like any other beneficiary under present law—he receives an actual distribution (or is entitled to receive such a distribution by operation of law).[167]

(1961)(embezzled funds held to be taxable); *Rutkin v. United States*, 343 U.S. 130, 137 (1952)(tax on monies received by extortioner was constitutional); *North American Oil Consolidated v. Burnet*, 286 U.S. 417 (1932)(monies received under a colorable claim of right are taxable income in year of receipt, even though the taxpayer may be required to return the monies in a later year).

[165] See, e.g., *Crane v. Commissioner*, 331 U.S. 1, 15 (1947)(Court dismissed taxpayer's claim that she did not have "income" under the Sixteenth Amendment in the amount claimed by the Government, even though the equity, or net value, of the property subject to a mortgage that she inherited and later sold was far less than the taxable gain computed by the Government).

[166] An as-applied due process challenge could not be sustained merely because a taxpayer demonstrates that he or she suffered hardship due to a lack of "mathematical precision" in the calculation of the liability imposed. See *Concrete Pipe & Products, Inc. v. Construction Laborers Pension Trust*, 113 S.Ct. 2264 (1993)(Court found no "taking" despite the fact that the liability imposed by statutory change with respect to past acts amounted to 46 percent of the petitioner's shareholder equity).

[167] See Part III.D, *supra*, discussing the election provided for by S. 700 and H.R. 1535, and Part V.F, *supra*, discussing the potential double tax problems that could arise if a person who will receive dividend or interest income from a U.S. corporation elects to continue to be treated for tax purposes as a U.S. citizen. This double tax problem, although potentially harsh under certain factual settings, does not appear to rise to the level of a due process violation because the tax imposed by the U.S., without regard to any other country's tax, is proportionate to the expatriate's current pre-tax economic income. It should also be noted that, under S. 700 and H.R. 1535, if a person elects to continue to be treated as a U.S. citizen with respect to a contingent interest in a foreign trust, the security requirement of those bills could present a problem for some beneficiaries who do not have current control over significant assets. Still, it seems

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Retroactivity.—Another potential as-applied due process challenge to the proposals could arise in the case where an individual has long ceased being a U.S. citizen by operation of long-standing, present-law rules but would be treated as a U.S. citizen under the proposals solely for tax purposes. This could occur under the Administration proposal in any case where, even though the individual performed an expatriating act prior to the effective date of the proposals (i.e., February 6, 1995) and, under present law, lost his or her U.S. citizenship as of the date of the expatriating act, such individual would be retroactively deemed to be a U.S. citizen for tax purposes simply because the person did not obtain a certificate of loss of nationality (CLN) from the State Department until after February 6, 1995.[168] (Under the Administration proposal, not only would such a person be treated as a U.S. citizen for purposes of the special deemed sale rule that applies upon expatriation, but such a person would theoretically become retroactively liable for Federal income taxes during years prior to the issuance of a CLN, even though, under present law, the person was not a U.S. citizen for regular tax purposes or any other purpose during those years. (See Part IV.B for a further discussion of this issue.) Under present law, a person need not obtain a CLN prior to relinquishment of U.S. citizenship; the CLN merely documents that the relinquishment of citizenship has, in fact, occurred. The relinquishment of citizenship is effective under present law as of the date when the expatriating act was committed along with the requisite intent (e.g., the person became naturalized in another country or began service in certain types of foreign government employment), regardless of if and when the person subsequently obtains a CLN. (See Part II.B.1 *supra*.) Thus, the proposal could have the effect of retroactively deeming a person's act of expatriation to be ineffective for U.S. tax purposes merely because the person did not (until after February 6, 1995) satisfy the proposal's new requirement of obtaining a CLN.

Requiring, on a going-forward basis, a U.S. citizen to obtain a CLN from the State Department in order for the person to be removed from the jurisdiction of the U.S. tax system—which is the same as saying that an expatriating act will no longer be self-effectuating and that the requisite intent to relinquish citizenship must be demonstrated to the State Department as part of a request for a CLN—would generally not appear to raise due process concerns. Imposing such a requirement on a prospective basis could be viewed as a rational rule for establishing a date certain for a U.S. citizen's departure from the jurisdiction of the U.S. tax system,

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unlikely that a court would consider a security arrangement imposed on a taxpayer to be so irrational or oppressive as to amount to a "taking" under the Fifth Amendment.

[168] As noted earlier, there is some uncertainty as to how the Administration proposal (as drafted) would affect an individual who had committed an expatriating act prior to February 6, 1995, but with respect to whom the State Department never issues a CLN. However, to the extent the State Department eventually does issue a CLN to such an individual (whether upon the State Department's own initiative or upon the individual's request) on or after February 6, 1995, the individual would retroactively be deemed to be a U.S. citizen for the period between the date that he or she performed an expatriating act under present-law rules and the date of the issuance of the CLN.

A similar issue of retroactivity arises under the Senate Amendment to H.R. 831, S. 700, and H.R. 1535, which provide that a person could retroactively be deemed to be a U.S. citizen if, on or after February 6, 1995 the individual (1) renounces U.S. citizenship before a U.S. consular officer, (2) furnishes to the State Department a signed statement of voluntary relinquishment confirming the performance of an expatriating act, (3) is issued by the State Department a CLN, or (4) has his or her certificate of naturalization cancelled by a U.S. court.

eliminating some difficult questions of subjective intent.[169] However, imposing such a rule retroactively is a different matter. Under the expatriation tax proposals, persons who have legally had the status of non-U.S. citizens for many years (perhaps decades) could be deemed retroactively to be U.S. citizens for tax purposes merely because they did not perform, prior to February 6, 1995, a ministerial act that previously was not mandated by U.S. law as a precondition for loss of U.S. citizenship. If the United States government were to attempt to impose tax in such a case, this would be an unprecedented retroactive tax law change that would "reach back" and pull a non-U.S. citizen into the jurisdiction of the U.S. tax system (subjecting the person to potential enormous tax liability under regular tax rules and the special deemed sale rule). Such a retroactive application of the expatriation tax would pose serious constitutional concerns.

With the exception of criminal laws (which are subject to the Constitution's ex post facto clause), Congress generally has the power to enact retroactive legislation. Nevertheless, there are constitutional limits on the exercise of this general authority. Retroactive applications of tax law changes have on a number of occasions been uphold by the Supreme Court against challenges that the retroactivity constituted an unconstitutional "taking" under the Fifth Amendment.[170] Most recently, in *United States v. Carlton*, 114 S.Ct. 2018 (1994), a unanimous Supreme Court upheld a retroactive amendment enacted in 1987 to an estate tax provision originally adopted as part of the Tax Reform Act of 1986.[171] The *Carlton* decision and other judicial decisions demonstrate, however, that there are limitations on how far-reaching retroactive tax legislation can be and still survive constitutional challenge. Even if a tax law change in general satisfies the traditional rational-basis test applied to economic legislation, any retroactive aspect of tax legislation independently must satisfy the rational-basis test by being shown to not be "arbitrary or irrational." 114 S.Ct. at 2022. Justice Blackmun, writing for the Court in *Carlton*, quoted from the earlier Supreme Court decision in *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 16 (1976): "The retroactive aspects of legislation, as well as the prospective aspects must meet the test of due process, and the justifications for the latter may not suffice for the former." In upholding the retroactive tax change in *Carlton*, Justice Blackmun stressed the fact that "Congress acted promptly and established only a modest period of retroactivity" (i.e., 14 months), which was consistent with "customary congressional practice" of

[169] See Part IV.B *supra*, for a discussion of the Treasury Department's rationale for the adopting a new test for loss of citizenship for tax purposes and the policy issues that could arise if there is a different legal test for loss of citizenship for tax purposes compared to the legal test for loss of citizenship for all other purposes.

[170] See CRS Report for Congress, "The Constitutionality of Retroactive Tax Increases: *United States v. Carlton*," #94-508 S (June 20, 1994)

[171] The Tax Reform Act of 1986 contained a new provision, Code section 2057, which allowed an estate to deduct one-half of the proceeds of a sale of stock sold to an employee stock ownership plan (ESOP). Section 2057 did not expressly require that the stock had to have been owned by a decedent at the time of death, thus, seeming to permit executors of estates to use estate assets to purchase shares of stock, immediately turn around and sell those shares to an ESOP, and obtain an estate tax deduction for half the sale proceeds. In *Carlton*, the executor of a large estate purchased about $10.5 million worth of MCI stock in late 1986, sold the same stock two days later to MCI's ESOP at a loss of about $631,000, but claimed an estate tax deduction of approximately $5 million under section 2057 (thereby reducing the estate's tax liability by about $2.5 million).

providing for retroactive effective dates for tax laws "confined to short and limited periods required by the practicalities of producing national legislation." 114 S.Ct. at 2024. Moreover, Justice Blackmun noted that *Carlton* involved a retroactive correction to a deduction provision that was inadvertently drafted to have broad consequences not contemplated by Congress (and a revenue cost over 20 times greater than anticipated the previous year), and Congress acted reasonably in deciding to prevent the revenue loss by "denying the deduction to those who made purely tax-motivated stock transfers." 114 S.Ct. at 2022.[172]

Retroactive application of the expatriation tax proposals would clearly be distinguishable from the situation in *Carlton* and other Supreme Court decisions upholding retroactive tax changes, which all have involved a "modest period of retroactivity" of about a year *and* relatively minor adjustments, such as a tax rate change or a corrective measure to an existing statutory scheme. As Justice O'Connor noted in her separate concurring opinion in *Carlton*, a tax provision made retroactively effective for more than a year prior to the legislative session in which the law was originally enacted would raise "serious constitutional questions." 114 S.Ct. at 2026.[173] Moreover, Justice O'Connor suggested that even a limited period of retroactivity would be problematic when the Government is enacting fundamental tax law changes: "The governmental interest in revising the tax laws must at some point give way to the taxpayer's interest in finality and repose. For example, a 'wholly new tax' cannot be imposed retroactively." 114 S.Ct. at 2025. See also *Wiggins v. Commissioner*, 904 F.2d 311, 314 (5th Cir. 1989)(and cases cited therein) (distinguishing retroactive application of rate changes or corrective measures from retroactive imposition of a "wholly new tax"). Thus, in contrast to the situation in *Carlton*, the expatriation tax proposals could present far more serious constitutional problems because the retroactive effects could potentially reach back for many years and would have the drastic effect of pulling some persons back into the jurisdiction of the U.S. tax system—a far more significant retroactive change than a mere rate increase or denial of a deduction. The retroactive effects of the proposals would also have the effect of subjecting persons who have been outside the jurisdiction of the U.S. tax system to the novel deemed sale rule that would tax otherwise unrealized gains. To use

[172] Although the *Carlton* decision used the traditional rational-basis test rather than a formulation which asked whether the retroactive law was "harsh and oppressive" (as some courts had done in the past), Justice Blackmun stated that the standards were identical. While some commentators have read *Carlton* as, in theory, lowering the threshold for testing the constitutionality of retroactive tax changes by giving little weight to the taxpayer's alleged detrimental reliance on the pre-amendment version of section 2057, other commentators have noted that *Carlton* reflects the Supreme Court's use of a modified balancing approach, more exacting than that used for prospective aspects of economic legislation, to determine the validityof retroactive tax changes. See, e.g., Comment, "The Supreme Court—Leading Cases," 108 *Harv. L. Rev.* 139, 229 (1994)("Although the Court's rational basis focus on the legislature prevents the searching review that could come with an emphasis on the taxpayer's hardships, the reasoning of *Carlton* does produce a somewhat more stringent process of scrutiny for retroactive than for prospective legislation."); CRS Report for Congress, *supra*, at 9 (The approach taken in *Carlton* "suggests that while the Court is likely to give Congress (or a state legislature) considerable latitude in its choice of legislative remedies to implement revenue policies, it will still make its own evaluation whether the choice of a retroactive tax increase was reasonable in the light of other possible legislative alternatives.")

[173] In another separate concurring opinion, Justices Scalia and Thomas took the position that no tax or economic legislation should be subject to judicial review under the so-called "substantive due process" standard.

Justice O'Connor's words, it is difficult to imagine taxpayers' "interest in finality and repose" being any stronger than with respect to the fundamental issue of whether or not they are beyond the jurisdiction of the tax system because they have ceased to be a U.S. citizen for all legal purposes.

In determining whether retroactive economic legislation violates the Fifth Amendment, the Supreme Court has not established a set formula for identifying an improper "taking," but has relied instead on "ad hoc, factual inquiries into the circumstances of each particular case." *Connolly v. Pension Benefit Guaranty Corp.*, 475 U.S. 211, 224 (1986). Consequently, it is difficult to predict with certainty which possible fact patterns could lead to a court holding that retroactive application of the expatriation tax proposals would be unconstitutional. However, it is significant that retroactive application of tax legislation to noncitizens as provided for by the expatriation tax proposals (regardless of the period of retroactivity or the amount of revenue involved) would seem to conflict with the rationale put forth in *Carlton* for why retroactive imposition of tax changes does not necessarily infringe upon due process. In *Carlton*, Justice Blackmun quoted with approval from the Court's earlier holding in *Welch v. Henry*, 305 U.S. 134, 146-47 (1938), where the Court stated:

> Taxation is neither a penalty imposed on the taxpayer nor a liability which he assumes by contract. It is but a way of apportioning the cost of government among those who bear its burdens. Since no citizen enjoys immunity from that burden, its retroactive imposition does not necessarily infringe due process.

This rationale highlights the fundamental unfairness of retroactively deeming persons to be U.S. citizens for tax persons—such persons have not had the benefits of citizenship, nor should they be apportioned the burdens of the cost of the U.S. Government, with respect to periods when, in fact, they were not U.S. citizens by operation of longstanding laws.

3. International human rights issues

The expatriation tax proposals provide special tax rules that would come into play when individuals renounce their U.S. citizenship or when certain long-term residents of the United States terminate their residency. Consequently, some observers have labeled the proposals as being "exit taxes" and have suggested that the proposals may conflict with rights to emigrate or expatriate recognized under international law. This section discusses the implications of the proposals under principles of international law.

General rules

A number of international agreements and statements of international law [174] recognize the right to emigrate as a fundamental

[174] The generally recognized sources of international law include: (1) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; (2) international custom, as evidence of a general practice accepted as law; (3) the general principles of law recognized by civilized nations; and (4) judicial decisions and teachings of the most highly qualified publicists of the various nations. Statute of the International Court

Continued

human right. The most widely recognized statement of the right to emigrate appears in Article 12 of the International Covenant on Civil and Political Rights ("International Covenant"), which states (in part):

> 2. Everyone shall be free to leave any country, including his own.
>
> 3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.[175]

In addition, the Universal Declaration of Human Rights ("Universal Declaration"), adopted by the United Nations General Assembly on December 10, 1948, recognizes both a right to physically leave, so-called "emigration," and a right to relinquish citizenship, so-called "expatriation." Article 13(2) of the Universal Declaration provides: "Everyone has the right to leave any country, including his own, and to return to his country." Article 15(2) of the Universal Declaration provides: "No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."[176]

The right to emigrate and the right to expatriate are theoretically distinct.[177] International law provisions and commentary focus on the right to emigrate (that is, the right to change one's residence) and not on the right to expatriate (that is, the right to change one's citizenship). Some commentators view the right to expatriate as being "somewhat less well protected" than the right to emigrate, and some even question whether the right to expatriate should be considered to be part of customary international law.[178] Moreover, the precise binding nature of the various international declarations and covenants (and their enforceability in particular settings) is debatable.[179] Nonetheless, what matters most for present purposes is that the United States officially recognizes *both*

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of Justice art 38, entered into force Oct. 24, 1945, 1977 U.N.Y.B. 1190, U.N. Sales No. E.79.1.1 (entered into force for United States, Oct. 24, 1945, 59 Stat. 1031, T.S. No. 993). See also Barist, et al, "Who May Leave: A Review of Soviet Practice Restricting Emigration on Grounds of Knowledge of 'State Secrets' in Comparison with Standards of International Law and the Policies of Other States," 15 *Hofstra L. Rev.* 381 (1987).

[175] Adopted December 16, 1966, entered into force March 23, 1976, 999 U.N.T.S. 171. The International Covenant was adopted unanimously by the General Assembly. The International Covenant entered into force after ratification by 35 nations, and as of January 1, 1985, 85 nations had ratified it. President Carter signed the International Covenant and submitted it to the Senate, but no action was taken at that time. 15 *Hofstra L. Rev.* at 387 footnote 16. Eventually, the Senate extended its consent to ratification in 1992.

[176] As discussed later on in more detail, it is perhaps more accurate to refer to this right, as some commentators do, as the "right to a nationality" or the "right of citizenship," because the right provides protection in both directions—the right to be free from arbitrary burdens imposed on a person's choice to *retain or renounce* citizenship.

[177] However, in some cases, both rights could be implicated, such as a case where in order to emigrate to a country, that country requires the person to renounce his citizenship elsewhere. It is our understanding that several countries, such as Korea, have such a rule.

[178] See, e.g., Letter of Professor Hurst Hannum, Tufts University, to Honorable Daniel Patrick Moynihan (dated March 31, 1995); I. Brownlie, *Principles of International Law* (4th ed.) 557 (1990). The right to emigrate was incorporated into the International Covenant, but the right to expatriate was not.

[179] As a technical matter, the International Covenant is viewed as an explicit obligation of the United States under international law, although subject to certain reservations expressed by the Senate. In contrast, other documents, such as the Universal Declaration, generally are considered political rather than legal, although in may respects are considered to reflect customary international law and are often referred to when interpreting treaties.

the right to emigrate and the right to expatriate.[180] Therefore, the rights to emigrate and expatriate recognized under international law are applicable norms against which the expatriation tax proposals must be judged.

Permissible limitations on the rights to emigrate and expatriate

The rights to emigrate and expatriate are not unqualified rights.[181] The rights protect individuals against arbitrary or unreasonable infringements by governments on the freedom to leave and return to their country of residence and to retain or renounce their citizenship. Some restrictions and limitations on these rights are recognized as being proper under principles of international law. However, such restrictions or limitations may not arbitrarily be imposed or be so burdensome as to amount to a *de facto* denial of the rights to emigrate or expatriate.

Right to emigrate

As a technical matter, it appears that, in the case of an individual who renounces U.S. citizenship, the expatriation tax proposals do not implicate the right to emigrate under international law. This is so because the proposals have no impact on a U.S. citizen who leaves the geographic territory of the United States, either on a temporary or permanent basis. A U.S. citizen may leave the United States and reside elsewhere for as long as he or she desires (and can return to the United States whenever he or she wants) and their status as a U.S. citizen will not be affected by the mere fact that they have resided elsewhere. Thus, as long as a person continues to be a U.S. citizen, he or she may come and go at will without being subject to any of the provisions of the expatriation tax proposals.[182]

In contrast, in the case of certain long-term resident aliens of the United States, the expatriation tax proposals appear to implicate the right to emigrate recognized under international law. Under the Administration proposal, if a person who is not a U.S. citizen but has lived in the United States for 10 of the last 15 years (8 of the last 15 under S. 700 and H.R. 1535) terminates his status as a lawful permanent resident ("LPR") in the United States (or, under S. 700 and H.R. 1535, begins to be treated as a resident of another country under a treaty between the United States and that other country), then the proposals would deem that person to have

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[180] See "Section 201 of the Tax Compliance Act of 1995: Consistency With International Human Rights Law," Memorandum of the Department of State, Submitted for the Record by the Department of the Treasury, Hearing before the Subcommittee on Oversight, Committee on Ways and Means, U.S. House of Representatives, March 27, 1995 (hereafter cited as "State Memo") (included in Appendix G).

[181] Article 12(3) of the International Covenant specifically recognizes that some restrictions may properly be placed on the right to emigrate; and article 15(2) of the Universal Declaration defines the right to expatriate as one that cannot be "arbitrarily" restricted.

[182] Generally, a person already would be outside the geographic limits of the United States at the time he or she renounces U.S. citizenship, and, therefore, that person's right to emigrate would not directly be implicated by the proposals. During peacetime, U.S. citizens must be outside the United States in order to renounce their citizenship. (State Memo at 2) Some observers have noted, however, that even though it may be technically correct to say that the proposals do not impose tax on a U.S. citizen's physical departure from the United States, in effect, the proposals function as an "exit tax" with respect to U.S. citizens, since virtually all U.S. citizens who renounce their citizenship do so in conjunction with their emigration from the United States.

sold certain assets at the time status as a U.S. resident is terminated and would impose tax on gains in excess of $600,000. By definition, a person terminates his or her status as a LPR of the United States (or starts to be treated as a resident elsewhere under a treaty) by leaving the United States in order to reside elsewhere (i.e., by exercising the right to emigrate). Thus, equating the right to emigrate with the right to change residence,[183] in the case of a resident alien of the United States, the expatriation tax proposals implicate the right to emigrate.[184] In such a case, therefore, the question is whether the right to emigrate is arbitrarily infringed upon by the proposals.[185]

Right to expatriate

As the State Department acknowledges, the expatriation tax proposals implicate the right to expatriate. The proposals would result in special tax rules being applied when a U.S. citizen renounces his or her U.S. citizenship. Therefore, as with the right to emigrate in the case of a resident alien who leaves the United States, the question follows whether the proposed special tax rules constitute an arbitrary infringement on the right to expatriate. Not all so-called "exit taxes"[186] are violations of the rights to emigrate or expatriate, but only those that are arbitrarily imposed.

Would the proposals constitute an arbitrary infringement under international law?

What kinds of restrictions or limitations would be viewed as improper infringements of the right to emigrate and the right to expatriate under international law? It is clear that a direct prohibition

[183] The State Department has informally indicated that there is some uncertainty about how the right to emigrate operates in theory in the case of LPR who does not automatically lose his or her United States "green card" status by moving elsewhere.

[184] The State Department memorandum dated March 27, 1995, recognizes at the outset that the expatriation tax proposal applies both to U.S. citizens *and* certain long-term residents of the United States. However, the memorandum is confined to an analysis of the impact of the proposal on U.S. citizens, concluding with respect to the right to emigrate that the proposal "does not affect a person's right to leave the United States." (State Memo at 2). However, this conclusion ignores the impact of the proposal on long-term residents who cease to be residents of the United States by taking up residence elsewhere.

[185] The question also has arisen whether the expatriation tax proposals are inconsistent with long-standing U.S. policies with respect to the right to emigration as reflected in the Jackson-Vanick Amendment to the Trade Act of 1974 (19 U.S.C. sec. 2432). The Jackson-Vanick Amendment restricts the granting by the United States of most-favored-nation treatment (and certain trade related credits and guarantees) to non-market economies (i.e., communist countries) that unduly restrict emigration. See Tab A of State Memo (included in Appendix G). Technically, the provisions have no applicability to any conditions or limitations on emigration imposed by the United States itself. Even so, some observers have questioned whether the expatriation tax proposals conflict with the underlying "spirit" of the Jackson-Vanick Amendment, such that it would be hypocritical for the United States to enact the proposals. See Letter from Professor Abram Chayes, Harvard Law School, to Honorable Daniel Patrick Moynihan, dated March 30, 1995. Because the Jackson-Vanick Amendment provides for trade sanctions to deal with practices of other countries that amount to a *de facto* or arbitrary restriction on the right to emigration by their nationals, the issue of the underlying "spirit" of the Amendment involves the same issues (discussed *infra*) raised in addressing whether the expatriation tax proposals constitute a *de facto* denial or arbitrary restriction of the right to emigrate under principles of international law. The right to emigrate under international law is the underlying "spirit" of the Jackson-Vanick Amendment.

[186] With respect to U.S. citizens, it is somewhat of a misnomer to refer to the proposed tax as an "exit tax," because the tax is triggered not by exiting but by renunciation of citizenship, regardless of how long a person has been away from the United States or whether they ever resided in the United States. The proposals are "exit taxes" in the conceptual sense that the person renouncing U.S. citizenship is exiting the jurisdiction of the United States tax systems. In the case of a nonresident alien subject to the proposals, he or she would be exiting the United States both physically and jurisdictionally.

of a person exiting a country normally would be such an improper infringement, absent compelling non-emigration reasons (such as pending criminal charges unrelated to emigration or quarantine of persons with contagious disease). See H. Hannum, *The Right to Leave and Return in International Law and Practice* 48 (1987). Also, if conditions imposed as a prerequisite to emigration or expatriation are, in reality, so burdensome or impossible to satisfy as to amount to a *de facto* denial of the right to emigrate or expatriate, such restrictions also would be considered to be the same as a direct prohibition of emigration or expatriation. *Id.* at 39-40. In addition, a restriction on the right to emigrate or expatriate imposed in a discriminatory manner (e.g., based on a person's religion, race, or ethnic background) also would be considered an improper infringement under principles of international law. *Id.* at 44.

The expatriation tax proposals—although *implicating* the rights to emigrate and expatriate—generally do not fall within the *clear-cut* cases referred to above where there is a *per se* or *de facto violation* of principles of international law. Under the proposals, some persons may be deterred from renouncing citizenship or emigrating, but no one will be directly barred from leaving the United States or renouncing citizenship. Persons who are subject to the proposals would not be compelled to actually pay tax as a precondition to exercising their right of emigration or expatriation. Moreover, because the tax liability that would attach at the time of departure or renunciation of citizenship would be based on built-in gains and because the first $600,000 of such gains would be excluded, it seems fair to assume that most persons would have the means to pay the tax (or would be permitted to defer the actual payment of the tax).[187] To the extent that some individuals would not be able to pay the tax liability (which would be payable after they expatriate or emigrate) because they own nonmarketable assets or have only an interest in a trust, the provision contained in S. 700 and H.R. 1535 that allows a person to effectively leave property within the taxing jurisdiction of the United States, and continue to obtain deferral of tax until actual sale or death, may remedy the problem in many cases of a significant burden being imposed on the exercise of a human right solely because the expatriate is unable to pay current tax. However, it should be noted that the approach taken in S. 700 and H.R. 1535 may allow for deferral of tax but at an extreme cost to the expatriate in some cases. This could occur if a condition of expatriating is agreement by the expatriate to continue to be taxed effectively as a U.S. citizen, but, due to the nature of the income the expatriate receives in the long run (i.e., dividend or interest payments made by a U.S. corporation), the expatriate may not be entitled to claim the U.S. foreign tax credit. (See Part V.F for a discussion of double taxation issues.) Consequently, in the case where a person planned to expatriate to a country with an income tax rate which, when combined with the

[187] Based on information provided by the Treasury Department, the State Department analysis assumes that "persons affected would have the means to pay the tax." (State Memo at 1). While this may be true in some cases, it clearly would not be true in other cases. In particular, beneficiaries of trusts who are treated as having gain on the deemed sale of the assets underlying their trust interest may not have the means to pay current tax.

U.S. tax rate, approached or even exceeded 100 percent of the income that the individual would be forced to continue subjecting to the U.S. tax system as a condition of expatriation, the U.S. foreign tax credit may not be available for such income even though the same income may be subject to tax by the new country of residence.[188]

The question that remains is whether the expatriation tax proposals—even though not a *per se* or *de facto* prohibition of the right to emigrate or expatriate—constitute an "arbitrary" burden imposed on such rights. There is no doubt that a significant tax could be levied on some individuals under the special rules provided for by the proposals. Indeed, this is the very purpose of the proposed deemed sale rule. The critical question is would the application of the special tax rules in all or some cases be considered "arbitrary." For international law purposes, the term "arbitrary" is somewhat nebulous, although the term clearly encompasses more than only those actions that are unlawful or improper under the domestic laws of the nation where the action takes place. Also, in theory, satisfying the "arbitrariness" standard requires the government to demonstrate more than is needed to pass the less-exacting "rational basis" test applied under the U.S. Constitution to domestic economic and tax legislation. See 15 *Hofstra L. Rev.* at 399-406; Hannum at 26-27 (restriction on right to emigrate must be "necessary" and not simply "reasonable").

With respect to the right to emigrate, commentators generally take the position that, at a minimum, certain procedural requirements must be satisfied in order for a restriction to avoid being "arbitrary." The restriction on the right should have a basis in the limiting nation's domestic laws enacted by the legislature and should be subject to independent review to curb potentially abusive or discriminatory determinations by administrative officials. Hannum at 49; 15 *Hofstra L. Rev.* at 399-400. The substantive standards for determining whether a burden imposed on the right to emigrate is "arbitrary," however, are somewhat less clear. In theory, to avoid being "arbitrary," a restriction or burden imposed on the right to emigrate must pursue a legitimate governmental aim and be narrowly tailored to be proportionate to that aim. Hannum at 27 (referring to "principle of proportionality"); 15 *Hofstra L. Rev.* at 401 and 406. Denial or discouragement of the right to emigrate cannot *itself* be a legitimate justification for a governmental action, as acts whose purpose is to destroy human rights are *per se* prohibited by international law. Hannum at 39.

[188] In such a case, the expatriate would have been required by S. 700 and H.R. 1535 to waive treaty protection, under which he or she might have obtained relief from double taxation, and it is not clear whether the new country of residence would allow a credit against its taxes for U.S. taxes paid as a result of the expatriate's earlier agreement to continue to be taxed as a U.S. citizen. Historically, commentators have taken the position that no rules of international law forbid international double taxation, which may arise because the jurisdictional connections used by different countries may overlap or because the taxpayer or the income may have connections with more than one country. See Norr, "Jurisdiction to Tax and International Income," 17 *Tax L. Rev.* 431, 438-39 (1962)("But the fact that no principles of international or even constitutional law require relief to be given does not mean that relief is generally denied. The necessities of commercial and fiscal co-existence and a decent self-restraint, often grounded in considerations of administrative convenience, have lead the nations of the would voluntarily to limit the scope of their tax jurisdiction.") Although a country's failure to provide for a foreign tax credit (or exemption for income taxed elsewhere) historically has been viewed to not violate international law, the issue does not appear to have been addressed in the specific context of the burden imposed on the right to emigrate or expatriate that could result from double taxation.

Beyond this, however, the question whether a restriction on the right to emigrate or the right to expatriate is "arbitrary" under principles of international law apparently involves a facts-and-circumstances determination and somewhat subjective judgments. Referring to the right to emigrate, Professor Hannum observes that, in many respects, the issue comes down to a balancing of the rights of the individual to come and go versus the interests of nations to enforce their rules. Hannum at 5-6. In this regard, governmental interests generally are given more weight when a person is leaving permanently rather than temporarily. Also, restrictions or burdens that have underlying political or ideological motives are considered by commentators to be more deserving of scrutiny than are restrictions imposed for economic reasons. Hannum at 55-56. Ultimately, a key factor in the analysis under principles of international law is the perceived motive underlying the rules or conditions that implicate human rights. Hannum at 40 ("In the final analysis, most limitations imposed on the right to leave on economic grounds must be judged in the context of the good faith—or lack thereof—of the government concerned.")

Comparing the tax burdens of persons who leave to persons who stay

The State Department takes the position that the expatriation tax proposals do not constitute an arbitrary infringement on rights recognized under international law and, therefore, the debate on the merits of the proposals should focus on policy issues. The most important premise underlying the State Department position is the view that taxes imposed under the proposals "would not be more burdensome than those they [i.e., expatriates] would pay if they remained U.S. citizens."[189] The State Department indicates that the basis for this assumption is information provided by the Treasury Department. Several academics and commentators who likewise conclude that the expatriation tax proposals are consistent with principles of international law also assume that the proposals would serve to equalize the tax treatment between those persons who remain United States citizens or residents and those who do not.[190]

Obviously, when taking into account only Federal income tax consequences, the above assumption is not accurate. Accumulated gains not realized by sale or exchange of property generally are not subject to Federal income tax. However, if one ignores the descriptive labels of different parts of the Internal Revenue Code and considers the aggregate income, gift, and estate tax burden borne by individuals who exercise their right to nationality by retaining

[189] See State Memo at 1 and 3. See also Prepared Statement of Jamison S. Borek, State Department Deputy Legal Advisor, March 21, 1995, stating that the expatriation tax proposal"would impose taxes comparable to those which U.S. citizens would have to pay were they in the United States."

[190] See Prepared Statement of Professor Paul B. Stephan III, University of Virginia School of Law, on Section 5 of H.R. 831, at 3 (viewing expatriation proposals as a "logical part of a comprehensive scheme to ensure that all appreciation of capital owned by a U.S. citizen eventually will be subject to a U.S. tax, whether income, gift, or estate"); Letter from Professor Detlev F. Vagts, Harvard Law School, to Hon. Leslie B Samuels, dated March 24, 1995 (the proposal "basically equalizes certain tax burdens"); Congressional Research Service (CRS) *Memorandum* dated March 23, 1995 at 3 (tax imposed under the proposal "appears to generally reflect amounts that for the most part would otherwise be payable upon death").

their U.S. citizenship, then it is a more difficult to view the proposals as imposing an "arbitrary" burden when their "right to a nationality" is exercised in the opposite manner—i.e., by relinquishing U.S. citizenship.[191] Noted international rights authority Professor Hurst Hannum has recently stated with respect to the expatriation tax proposals:

> In sum, imposition of a non-discriminatory tax on accrued income at the time citizenship is renounced , in a manner consistent with the way in which that same income would be treated at the time of death, does not appear to me to violate either the internationally protected right to emigrate or the (somewhat less well protected) right to a nationality.[192]

The premise underlying the State Department's opinion (and the view expressed by some academics and commentators) that the proposed expatriation tax equalizes the tax consequences that follow from either retaining or terminating one's status as a U.S. citizen or resident is generally accurate *if* it is assumed that a taxpayer who remains within U.S. tax jurisdiction has only two simple choices: He or she can either (a) sell appreciated property during his or her lifetime, and be subject to income tax on all built-in gains, or (b) hold onto property until death, whereupon the value of the property is subject to estate tax.[193] Under such a simplifying assumption, the up-front tax imposed under the proposal is comparable to (in fact, generally is less than) the present value of the future income or estate tax liability imposed on a person who remains within U.S. tax jurisdiction.[194] However, the question should be asked whether the comparison of tax liabilities in this manner is consistent with principles under international law regarding the proper scope of a country's taxing power. Under the State Depart-

[191] See Letter from Professor Andreas F. Lowenfield, New York University, to Hon. Leslie B. Samuels, dated March 27, 1995 ("I do not believe the effect of the proposed tax could be classified as an *arbitrary denial* of the right to change one's nationality"); Prepared Statement of Professor Paul B. Stephan III at 3 ("inconceivable" that proposal could be seen to violate international law).

[192] Letter from Professor Hurst Hannum, The Fletcher School of Law and Diplomacy, Tufts University, to Honorable Daniel Patrick Moynihan, dated March 31, 1995. In an earlier letter, Professor Hannum had expressed concerns whether the proposals, if resulting in the imposition of tax solely on the ground that a person was renouncing citizenship, could interfere with international human rights. Letter from Professor Hannum to Honorable Daniel Patrick Moynihan, dated March 24, 1995. However, in his letter dated March 31, 1995, Professor Hannum states: "Having now received additional and more specific information about the tax, however, I have become convinced that neither its intention nor its effect would violate present U.S. obligations under international law."

[193] However, as explained in more detail in Part IV.C of this Report, the above simplified comparison of potential tax liabilities does not take into account foreign taxes imposed on a U.S. citizen who expatriates, nor does it take into account the variety of activities in which a taxpayer can engage under U.S. law (some would refer to as "tax planning devices") that would significantly reduce the aggregate, long-run tax liability of a taxpayer who remains a U.S. citizen. For instance, if a taxpayer makes numerous and repeated gifts of appreciated assets (or partial interests in such assets) valued at $10,000 or below, the built-in gain in such assets will never be taxed to the taxpayer under either the Federal income or estate tax regimes. (However, the gains may eventually be subject to tax imposed on the donee, who inherits the donor's basis.) Another example where accrued gains of a U.S. citizen are never subject to either income or estate taxes is when the taxpayer borrows funds, using the appreciated property as collateral, and spends the funds on consumption during his lifetime, such that the appreciation not only escapes income tax but also estate tax due to the offsetting liability left to the estate.

[194] With the simplifying assumption, the up-front tax liability resulting from the proposed deemed sale rule would be less than the present value of the future tax liability borne by the individual if he remained a U.S. citizen, because, under the proposals, the $600,000 exemption would be available immediately, yet tax would be imposed at income tax rates only on built-in gains, rather than at the higher estate tax rates on the value of property.

ment's premise, the present value of the future income and estate tax liability includes tax on appreciation (or any income stream) attributable to the period after the date when, in fact, the individual has expatriated. A different result would follow if one were to attempt to compare the expatriation tax imposed under the proposals to the present value of any future income or estate tax liability imposed only with respect to the gains that occurred up to the point when the taxpayer decided to expatriate.[195] By considering the eventual tax burden borne by the individual with respect to property (ignoring the fact that he expatriated and, thus, including in the present value calculation the effects of the passage of time as if he had been a U.S. citizen), the premise that the proposals "equalize" tax treatment arguably can be viewed as based on the notion that the United States could, if it wanted to, continue to assert tax jurisdiction over an individual who has expatriated and severed all economic ties with the United States on the sole ground that the individual continues to derive economic benefits from gains accrued but not taxed during the period that the individual was a U.S. citizen or resident.[196] In other words, would it be consistent with principles of international law if future appreciation and income from property of an expatriate were treated as "U.S. source" income for the sole reason that no tax was paid on the increase in value of the property while the person was a U.S. citizen?

As a theoretical matter, it is difficult to answer this question by reference to principles of international law. Most commentators adhere to the view that there generally are no rules of international law that define the outer limits of a country's tax jurisdiction. Rules of tax jurisdiction exist in the sense that certain patterns of taxation are acceptable as a matter of international custom and as a practical matter relating to enforcement. Oldman and Pomp, "The Brain Drain: A Tax Analysis of the Bhagwati Proposal," in *Taxing the Brain Drain* (Bhagwati and Partington, eds. 1976) at 170; Norr "Jurisdiction to Tax and International Income," 17 *Tax L. Rev.* 431 (1962). At best, principles of international law prohibit "completely arbitrary extra-territorial taxation." Radler, "Basic Origins of International Double Taxation and Measures for its Avoidance," reprinted in Owens, *International Aspects of U.S. Income*

[195] Professor Robert F. Turner, U.S. Naval War College, who believes that the proposals raise serious questions under principles of international law, writes: "But I would deny that the State may 'punish' such an individual [i.e., a person who announces his intention to expatriate] by imposing additional tax liability on the premise that had the individual chosen to remain a citizen of the State, additional tax obligations would eventually have been created." Letter from Professor Robert F. Turner to Honorable Daniel Patrick Moynihan, dated April 29, 1995, at 2. Acknowledging his limited knowledge of tax law, Professor Turner concludes that it is difficult to argue that expatriates are being asked to "settle their accounts" because "it is my impression that capital gains liability does not attach merely with the passage of time, but only upon some realization event such as selling the property in question at a price above that for which it was purchased." *Id.* Thus, with respect to the secondary conceptual issue discussed earlier in this Report, Professor Turner views that Federal income, estate, and gift tax systems as being separate regimes, rather than a comprehensive system that, with the passage of time, ultimately taxes accrued economic gains regardless of income tax notions of "realization."

[196] Professor Turner writes: "I believe that principles of international law concerning State sovereignty and jurisdiction would preclude a State from imposing tax obligations on its former citizens years after they had severed that relationship and become citizens of a second State (unless, of course, tax jurisdiction was predicated upon some continuing relationship with the first State—such as earning income or owning property there.)" *Id.* Professor Turner does not directly address whether the "continuing relationship" could be established merely by the fact that an expatriate continues to derive income which is attributable to untaxed economic gains accrued during the period when the person was a U.S. citizen?

Taxation, vol. 1 (1980).[197] As far as non-residents (and non-citizens are concerned) tax may be imposed on some economic gain as long as there is a minimum territorial connection. *Id.* ("While the discretionary limits on construing such a link are wide, there must at least be some territorial connection, however, small.") The question usually is addressed by asking whether it is reasonable to view the taxing country as being a "source" of the income being subject to tax, even if another country also has sufficient contacts to the same income that it too asserts tax jurisdiction. See Ross, "United States Taxation of Aliens and Foreign Corporations: The Foreign Investors Tax Act of 1966 and Related Developments," 22 *Tax L. Rev.* 277, 363-65 (1967); Norr, *supra,* at 438 (nexus or minimum connection issue is more relevant to the question of enforcement and "tax jurisdiction in practice" rather than the issue of "tax jurisdiction in theory").[198]

Inevitably, under all global income and estate tax systems (i.e., those that tax world-wide income or assets), tax consequences flow from an individual's exercise of his right to emigrate (and, in the case of the U.S., the exercise of the right to citizenship), because the jurisdiction of a tax system itself hinges on whether a person is a resident (or citizen) of the taxing country. In contrast to other human rights recognized under international law, it is not possible to divorce tax consequences from a person's exercise of his right to remain in, or exit from, a country (or retain or renounce citizenship). Thus, just as it may be reasonable for a country to provide special tax rules when a person or property *enters* the jurisdiction of its tax system (such as a step-up in basis[199]), one could argue that so also is it proper under international law—i.e., not "arbitrary"— for special rules to apply when a person or property *exits* the jurisdiction of the country's tax system, so long as the special rules are not irrational when compared to the aggregate tax system (i.e., income, estate, and gift taxes) and the underlying motive is to protect the integrity of the system rather than to penalize or prohibit the exercise of the right to emigrate or expatriate.[200] The fact that the expatriation tax proposals apply only to built-in gains and exclude real estate (which cannot be removed from U.S. jurisdiction) and parallel the estate tax by providing for a $600,000 ex-

[197] See also Choate, Hurok, and Klein "Federal Tax Policy for Foreign Income and Foreign Taxpayers—History, Analysis and Prospects," 44 *Temple L. Q.* 441 (1970)(general principles of international law preclude some forms of taxation, similar to the due process limitation in the U.S. constitution that prohibits taxes that are so irrational as to be a "taking" of property); *United States v. Bennett*, 232 U.S. 299 (1914)(rejecting due process challenge to Federal Government's power to tax property owned by U.S. citizen, even though property was outside geographic limits of the United States and had its permanent situs in a foreign country).

[198] There is no support for the proposition that, under international law principles, the *Macomber* concept of "realization" is a limitation on the meaning of the "source" of income for purposes of tax jurisdiction. In order to assert tax jurisdiction, only a minimal nexus is required between the income or property being taxed and the taxing country. See *Burnet v. Brooks*, 288 U.S. 378 (1933)(finding no constitutional or international law violation where the United States levied an estate tax on foreign securities owned by a deceased non-resident alien simply because stock certificates and bonds were in the possession of other persons located in the U.S. who collected dividends and interest from such foreign securities and deposited the dividends and interest into U.S. bank accounts).

[199] Commentators generally have supported the step-up basis provision of the expatriation tax proposals that would apply when aliens enter the U.S. tax jurisdiction.

[200] See Letter from Professor Anne-Marie Slaughter, Harvard Law School, to Leslie B. Samuels, dated May 22, 1995 (concluding that S. 700 is consistent with international law: "To the extent that expatriation is a means to the end of tax evasion, it is reasonable and legal for a government to qualify or condition the right of expatriation in such a way as to prevent it from being used for such purpose.")

emption is indicative of an underlying motive to protect the comprehensive U.S. tax system against tax deferral being converted into tax exclusion, rather than an attempt to penalize the exercise of human rights. It is also relevant for international law purposes (even if the logic is somewhat circular) that other countries, such as Australia, Canada, and Denmark provide for somewhat analogous rules that deem certain assets to be sold when a person is exiting the tax jurisdiction of the country. (See Appendix B *infra*.) Moreover, the absence of any special rules to make adjustments when a person exits the jurisdiction of the United States tax system could be viewed, in present-value terms, as the imposition of a burden on those who do not exit the jurisdiction of the system because they exercise their human right to retain U.S. citizenship or residency. In sum, viewing the objective and design of the proposals as an attempt to neutralize the tax consequences that flow under United States tax laws from the decision to retain or renounce citizenship,[201] it is difficult to conclude that the proposals would be an arbitrary infringement under international law, even though some techniques remain for those who retain citizenship to effectively exclude some gains from Federal income or estate taxation.[202]

Public perception issues

In view of the lack of clearly defined, objective standard for judging whether the expatriation tax proposals constitute an arbitrary infringement on the rights to emigrate or expatriate recognized under international law—and the difficult conceptual issues in examining the present value of future tax burdens—it seems inevitable that debate will continue as to whether the proposals amount to "exit taxes" that conflict with customary international law. Even if a general consensus is reached on the issue among academic scholars, differences in opinion will undoubtedly remain among others. Accordingly, as some observers have noted, Congress may wish to consider how the proposals will be perceived in comparison to the rights to emigrate and expatriate, even if a close examination of the issue leads to the reasonable conclusion that there is no technical violation of either right. Efforts by the United States, other countries, and private organizations to promote adherence to human rights principles could be undermined by the mere fact that

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[201] Tax consequences (taking into account global tax consequences from all potential tax jurisdictions) from the decision to retain or renounce U.S. citizenship may be neutralized in the case where a person is considering relocating to a tax-haven country; but this would not be true if an expatriate moves to a country with a tax system comparable to that of the United States and mechanisms are not available to prevent double taxation. See Part V.F *infra*. In the latter case, one could argue that the combined effect of the two countries' overlapping tax rules as applied to a particular case could constitute an arbitrary burden on the right to emigrate or expatriate. Such an argument would be somewhat novel in view of the historical position taken by commentators that double taxation does not violate principles of international law. See footnote 188 *supra*.

[202] It would be difficult to argue that special tax rules which end tax deferral at the time of exit are "arbitrary" under principles of international law on the ground that they do not take into account that, despite the general rules of the income and estate tax regimes, there are tax planning techniques available for those who remain within the system to effectively convert tax deferral on some economic gains into tax exclusion. Stated in a different way, it is difficult to say that it is "arbitrary" for international law purposes to prevent expatriation from being a route to tax exclusion merely because limited routes to tax exclusion are available, under certain fact patterns, for those who officially remain within the jurisdiction of the U.S. tax systems. The existence of "loopholes" in a system should not elevate the conversion of tax deferral to tax exclusion to the level of a right under international law.

some will argue that the expatriation tax proposals are analogous to "exit taxes" or other practices engaged in by regimes that historically have not respected the right to emigrate or expatriate under international law.[203] Thus, in examining the policy issues weighing for and against the expatriation tax proposals,[204] Congress may wish to add to the list of policy issues weighing against the proposals the possible detriment that could result to the promotion of human rights merely from how enactment of the proposals would be perceived throughout the international community.

[203] See Testimony of Rabbi Jack Moline before the Subcommittee on Oversight, Committee on Ways and Means, March 27, 1995 ("For while we Americans may understand the fine lines we draw regarding income, assets, capital gains and tax liabilities, foreign dictators will find them irrelevant."); Letter from Professor Abram Chayes, Harvard Law School, to Honorable Daniel Patrick Moynihan, dated March 30, 1995 ("If the United States now adopts this restrictive approach, it will give oppressive foreign governments an excuse to retain or erect barriers to expatriation and emigration."); Letter from Professor Robert F. Turner, U.S. Naval War College, to Honorable Daniel Patrick Moynihan, dated April 29, 1995, at 4 ("If the United States can by act of law pretend that its expatriates 'sold' their property, what is to stop other States from pretending that their expatriates 'donated' their property to the State? I don't see the distinction.")

[204] Another issue of public perception that Congress may wish to consider could include the positive effects on the United States Government's image from enacting legislation that is designed to prevent tax evasion which could result under present law when persons renounce U.S. citizenship and move to a so-called "tax haven." See Norr, *supra*, 17 *Tax L. Rev.* at 458-59 (referring to enactment of CFC rules in 1962: "[T]he effect of the anti-tax-haven legislation on the American image abroad may be salutary. We must recognize that there is an image abroad of the American as tax-avoider. . . .Thus, the proposed legislation would seem to be not only constitutional, but would seem to be desirable in the national interest as well."); Ross, *supra*, 22 *Tax L. Rev.* at 342 (referring to enactment of 1966 Act, including section 877: "[T]he practical impact of the new rules will be largely to demonstrate that the United States does not permit itself to be used as a 'tax haven'").

E. Possible Effects on the Free Flow of Capital into the United States and on the Free Trade Objectives of the United States

1. Overview

There has been no systematic study of the economic effect of the existing exit taxes (e.g., Canada and Australia[205]) or of regimes that attempt to tax former residents after they have taken up residence in another country (e.g., Germany,[206] present law in the United States). The experience of countries that currently impose exit taxes or that currently attempt to tax former residents may be of limited utility in analyzing the Administration proposal, the Senate amendment to H.R. 831, or S. 700 and H.R. 1535, because those foreign countries' tax provisions relating to expatriates are of more limited scope, sometimes applying to a narrower class of assets or the provisions operate in a substantially different context. For example, the Netherlands' provisions apply primarily to sales of substantial interests in a business and France's taxation of expatriates applies only to those former residents who relocate to Monaco, while the exit taxes in Australia and Canada operate as part of tax systems that tax accrued capital gains upon the death of the taxpayer, but otherwise do not impose an estate tax.

In general, exit taxes or tax systems that tax former residents may be expected to affect taxpayers' choice of their country of residence and their country of citizenship. The movement of individuals from one country to another may affect the supply of labor and labor income, in both the country gaining the individual and the country losing the individual. However, the aggregate effects are likely to be small unless the migration plans of a large number of individuals are affected. As individuals migrate, they may or may not relocate their physical and portfolio assets to their new country of residence. Again, the aggregate effects are likely to be small unless the migration plans of a large number of individuals are affected. Moreover, while labor income can only be earned at the physical location of the migratory taxpayer, investment income need not be earned where the migratory taxpayer is located. The Administration proposal regarding the taxation of certain expatriating citizens and residents would not be expected to have significant effects on the flow of investment funds into or out of the United States.

The United States has long been an advocate of free and open trade in goods and services among countries and has promoted the free flow investment among countries. The United States also long maintained that income resulting from such trade and investment may legitimately be subject to tax both by the United States and foreign countries, and has entered into tax treaties providing for equitable taxation of such income.[207] The Administration proposal,

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[205] Denmark also recently has imposed what might be considered an exit tax. For a description of the tax regimes of Australia, Canada, and Denmark, see Appendix B.

[206] Appendix B describes the tax regimes of those countries that attempt to tax former residents.

[207] See Part V.G. for a discussion of the potential interaction of existing U.S. tax treaties with the Administration proposal.

while it may alter the pattern of international investment, does not close U.S. borders to the flow of goods, services, or investment.

2. Cross-border movement of individuals in response to tax changes

a. In general

Some economists have argued that among the many factors influencing an individual's choice of residence is the mix of taxes the individual must pay and the public services he receives. If different jurisdictions offer differing amounts of public services and taxes, then one could conceive of individuals "shopping" among jurisdictions to select their most desired package of taxes and public services.[208] An implication of this analysis is that a change in either the taxes assessed or public services offered, all else equal, may change the locational choice of some individuals. The Administration proposal would change the "tax" component of the U.S. fiscal package leaving unchanged public services and other factors that might influence an individual's locational decision.

Treating taxes and public services in different jurisdictions as packages between which potential migrants might choose suggests that there will always be some migration motivated by comparison of different countries' fiscal packages. Moreover, unless all countries charged fees based on the cost of government services provided, or if all countries imposed the same taxes and provided the same government services, there is no policy, either tax or spending, that one country could unilaterally impose that would eliminate migration motivated by individuals shopping for a different fiscal package. The problem does not arise solely because the tax base is broader in one country than another, although such differences could affect the incentives to migrate. The potential for migration arises because the time at which the taxes are collected is not the same time at which the public services are provided and some of the taxes collected may provide no public services but rather be transferred to other individuals.[209] If for example, the public services are provided to individuals early in their life (e.g., education) while the taxes are collected late in their life (e.g., estate taxes) in country A while country B collects payroll taxes on young workers to provide medical care for the elderly, an individual could benefit by working and attending school in country A and retiring to country B.

Any change in the package of taxes and public services potentially affects the locational decision of two different individuals: individuals in the United States who might consider emigrating from the United States and individuals outside the United States who might consider immigrating to the United States.

[208] Charles Tiebout, "A Pure Theory of Local Expenditures," *Journal of Political Economy*, 64, 1956, pp. 416-424.

[209] See Jagdish N. Bhagwati and John Douglas Wilson, "Income Taxation in the Presence of International Personal Mobility: An Overview," in Jagdish N. Bhagwati and John Douglas Wilson (eds.), *Income Taxation and International Mobility*, (Cambridge: The MIT Press), 1989, pp. 5-6, for a discussion applying the benefit principle of taxation on a lifetime basis as compared to the ability-to-par principle.

b. Migration of U.S. citizens and permanent residents

Part IV.C. above, discusses how the Administration proposal might effect the lifetime tax liabilities of an individual contemplating expatriation. By deeming recognition of capital gain on certain assets prior to relinquishing citizenship, the Administration proposal would increase the tax payments made to the United States in some circumstances.[210] In other circumstances the Administration proposal may reduce total tax liabilities from expatriation. Where the proposal increases lifetime tax liabilities, the effect would be to increase the cost of expatriating, thereby causing more current citizens and permanent residents to retain their current status than otherwise might. Where the proposal reduces lifetime tax liabilities, the effect would be to decrease the cost of expatriating, thereby causing more current citizens and permanent residents to relinquish their current status than otherwise might.

c. Migration of non-U.S. citizens

For citizens of other countries who are not permanent residents of the United States and who might contemplate residing temporarily in the United States or becoming a permanent resident of the United States, the effect of the Administration proposal is clear, but the effect of S. 700 and H.R. 1535 is ambiguous. Noncitizens contemplating citizenship or residence in the United States may well foresee a possibility, perhaps remote, that their decision to become a U.S. citizen or resident will not be permanent. However, once one is a citizen or resident one would be subject to the deemed recognition rules of the Administration (and S. 700 and H.R. 1535) proposal. This would increase the expected, or potential, tax cost of assuming U.S. citizenship or residency. S. 700 and H.R. 1535, however, would permit a non-citizen to step up the basis of currently held assets upon assuming citizenship (or permanent residence). This may reduce the tax cost of assuming U.S. citizenship or residence. Present law does not provide such a step-up of basis and any gains recognized by a U.S. citizen or resident are computed relative to the individual's actual basis in the asset, even if most of the gain accrued prior to assuming U.S. citizenship or residency. For individuals with substantial accrued capital gains, S. 700 and H.R. 1535 could reduce the potential tax cost of becoming a U.S. citizen or resident. If the cost of becoming a U.S. citizen or resident is increased, immigration to the United States may be reduced. If the cost of becoming a U.S. citizen or resident is reduced, immigration to the United States may increase.

The importance of the step-up feature provided in S. 700 and H.R. 1535 may be small. In practice, a potential immigrant may be able to step up the basis of his assets by briefly residing in certain tax haven countries prior to immigrating to the United States. This suggests that the Administration proposal, S. 700, and H.R. 1535

[210] Under present-law section 877, an expatriate may be liable for certain taxes for up to 10 years subsequent to relinquishment of citizenship. If the taxpayer were to sell his or her assets during that 10-year period and if those assets had experienced appreciation between the date at which the taxpayer relinquished U.S. citizenship and the date of sale of the assets, present law could actually require a greater tax payment, even in present value terms, than would the Administration proposal. See Part IV.C. for some discussion of tax liabilities under present law and the Administration proposal.

probably would work to reduce immigration to the United States.[211]

d. Potential effects of changes in immigration on the U.S. economy

In a large economy the immigration or emigration of one individual is unlikely to have any significant effect, even if that individual is a person of great wealth or skill. The migration of any one individual is unlikely to alter the supply and demand conditions of either the labor market or the capital market. The same would be true in both the country to which the individual migrates and from which the individual emigrates.[212] The losses or gains are small in comparison to the economy.

If a significant number of individuals migrate, the losses or gains to the economy may no longer be small. Consider the case of emigration from the economy, the economy that experiences emigration may lose more than marginal contributions to the output of society that were made by the emigres. While the loss of labor may actually drive up the wages earned by those who remain, society's total output will fall. Society may lose even more output than that measured by the wages lost from departing emigrants if the output of those who depart produces rewards to society greater than the rewards the individual captures for himself in his earned income. For example, a scientist who develops a vaccine against a communicable disease generally creates benefits for society in excess of the income he is able to earn from the sale of the vaccine. Economists refer to such additional social benefits as "positive externalities" or "external benefits." The society may lose more than the scientist's wages should he emigrate if society had subsidized the scientist's training. Society would lose its "investment" in human capital.[213] Conversely, the country to which individuals immigrate may gain not only the additional output such individuals can produce but also any external benefits they might create and the recipient country may also receive an influx of human capital at no cost.

The Administration proposal is targeted at certain individuals with above median financial wealth. Some such individuals are likely to be talented individuals possessing greater than average skills or human capital. If the Administration proposal discourages the emigration from the United States of such individuals, the discussion above suggests that the economy may benefit. However, as noted above, the Administration proposal also is likely to discourage the immigration to the United States of similarly talented or educated individuals. For example, multinational corporations post foreign nationals to the United States to manage their U.S. divi-

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[211] Immigration to the United States is limited and demand generally exceeds permitted limits. Therefore, the proposals would not lead to reduction in immigration, but rather a change in the composition of those individuals who seek to immigrate to the United States.

[212] For a discussion of this point see Herbert B. Grubel and Anthony D. Scott, "International Flow of Human Capital," *American Economic Review*, 56, 1966, pp. 268-274.

[213] For further discussion of the gains and losses from the migration see Jagdish Bhagwati and Koichi Hamada, "The Brain Drain, International Integration of Markets for Professionals and Unemployment: A Theoretical Analysis," in Jagdish N. Bhagwati (ed.), *The Brain Drain, vol. II, Theory and Empirical Analysis*, (New York: North-Holland Publishing Co.), 1976, pp. 113-114. For a more recent discussion of these issues see, Vito Tanzi, *Taxation in an Integrating World*, (Washington, D.C.: The Brookings Institution), 1995.

sions. These executives often obtain green cards. The Administration proposal could discourage such talented executives from seeking postings in the United States.

e. Responsiveness of migration to taxation

The United States has long been perceived as the net beneficiary of the immigration of talented, educated foreign nationals. The United Nations Conference on Trade and Development ("UNCTAD") has estimated that the net income earned by United States from skilled immigrants annually was as large as $3.7 billion in 1970.[214] That figure would be equivalent to $14.1 billion in 1994 dollars. While the calculations that lead to such estimate are subject to dispute, others have calculated that 11,236 persons deemed to be "professional, technical, and kindred personnel" immigrated to the United States from developing countries in 1970 alone. In 1971, 18,850 scientists, engineers, and physicians were estimated to have immigrated to the United States from all other countries, developed and less developed. A comparable number was estimated to have immigrated to the United States in 1972.[215]

While these numbers suggest the magnitude of income flows that are associated with immigration decisions, they provide no insight regarding the motivation of such migration. There have been attempts to empirically investigate the determinants of migration. One survey of such attempts concludes that "both questionnaire and statistical evidence lend support to the view that wage rates matter."[216] The Administration proposal would diminish the expected after-tax income of an immigrant. These findings would suggest that there should be a negative effect on the immigration to the United States of skilled individuals. However, as explained above, the effect on the expected after-tax income of immigrants is ambiguous because of the step up in basis and by the fact that the future tax increase is conditioned upon subsequent emigration.[217] The aggregate effect is likely to be small.

Some analysts have attempted to assess the factors that motivate internal migration within the United States. The evidence has been mixed. Some studies have found individuals strongly responsive to fiscal packages.[218] A recent study examined the migration behavior

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[214] Jagdish Bhagwati, "Editor's Note," in Jagdish Bhagwati (ed.), *The Brain Drain, vol. II, Theory and Empirical Analysis*, (New York: North-Holland Publishing Co.), 1976, vol. II, p. 209.

[215] Bhagwati, "Editor's Note," *The Brain Drain*, p. 209 and 215.

[216] Paul Krugman and Jagdish Bhagwati, "The Decision to Migrate: A Survey," in Jagdish N. Bhagwati (ed.), *The Brain Drain, vol. II, Theory and Empirical Analysis*, (New York: North-Holland Publishing Co.), 1976, p. 32. Other studies also point to the importance of greater income or wage potential in the United States as an important factor drawing immigrants to the United States. Robert E. B. Lucas, "The Supply-of-Immigrants Function and Taxation of Immigrants Incomes," in Jagdish N. Bhagwati (ed.), *The Brain Drain, vol. II, Theory and Empirical Analysis*, (New York: North-Holland Publishing Co.), 1976, and George Psacharopoulous, "Estimating Some Key Parameters in the Brian Taxation Model," in Jagdish N. Bhagwati (ed.), *The Brain Drain, vol. II, Theory and Empirical Analysis*, (New York: North-Holland Publishing Co.), 1976.

[217] The existence of a tax, even if never collected, could affect migration if the tax is perceived as signalling the possibility of higher taxes in the future for those who immigrate to the United States or an anti-immigrant attitude. Some of the survey studies have attempted to assess "attitudinal" factors that effect migration. One study identified "satisfaction with the U.S. way of life" as one of the most important factors determining migration. Krugman and Bhagwati, "The Decision to Migrate," p. 48.

[218] For example, see Andrew Reschovsky, "Residential Choice and the Local public Sector: An Alternative Test of the 'Tiebout Hypothesis'," *Journal of Urban Economics*, vol 6, pp 501-520. Reschovsky's study is in the context of individuals choosing among different suburban locations.

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of retired persons to determine to what extent the different fiscal packages available within the United States might affect location decisions.[219] By restricting the study to retired persons, an individual's location decision was not dependent upon employment opportunities or a long-term employment relationship. The study found that generally the effects of fiscal variables were small. In particular, the study found that the existence and magnitude of a State estate or inheritance tax did matter statistically, but that the magnitude was so small as to be of little economic consequence. While income taxes also might matter, the study found that generally State and local tax structure was not of large importance to the locational choice of the elderly.

Some view the Administration proposal as a proxy tax for the estate tax revenue that the United States loses if a wealthy individual expatriates. If, as Dresher study suggests, the estate tax has little effect on the location decision, the Administration proposal may have little effect on the migration to or from the United States. On the other hand, the magnitude of individual State estate taxes is small in comparison to the Federal estate tax. The results of this research may not be relevant for assessing the decision of a citizen to continue to reside in the United States or to relinquish his citizenship and take up residence in a country with no estate tax.

f. Cross-border flows of financial and real capital

The Administration proposal relates to the taxation of individuals based upon where they have chosen to reside and the nationality they have chosen to retain. It is not about where individuals choose to invest. Moreover, it is most commonly observed that while capital is mobile, investors generally are not. The bulk of cross border investment is attributable to multinational enterprises and financial institutions, not to migrating individuals. These observations would suggest that the Administration proposal is not likely to affect the flow of financial capital into or out of the United States.

On the other hand, there might be concern that expatriating individuals will take their financial capital with them and invest it in their new country of residence. As the individuals targeted by the Administration proposal are individuals possessing more than median wealth holdings in the United States, withdrawals of financial capital could be more than negligible amounts. Moreover, there is evidence that capital is not completely mobile internationally. Investment is generally greater in countries with high saving rates than in countries with low saving rates.[220] If high saving rate individuals expatriate and save abroad, investment in the United States could be diminished.

He finds, for example, that measures of high quality public schools strongly attracted households to certain locations.

[219] Katherine Ann Dresher, "Local Public Finance and the Residential Location Decisions of the Elderly," unpublished doctoral dissertation, University of Wisconsin, Madison, 1994.

[220] Martin Felstein and Charles Horioka, "Domestic Saving and International Capital Flow," *Economic Journal*, vol. 90, (June 1980), pp. 314-29, and Martin Feldstein and Phillippe Bacchetta, "National Saving and International Investment," in B. Douglas Bernheim and John B. Shoven (eds.), *National Saving and Economic Performance*, (Chicago: University of Chicago Press), 1991, pp.201-220.

There is evidence that the location of investment is sensitive to the burden of taxation on the returns to investment.[221] However, most of this evidence relates to foreign direct investment by multinationals or individuals who need not reside in the country in which the investment is made. Such investment flows into and out of the United States generally would be unaffected by the Administration proposal.

As long as relief from double taxation is provided, the principle of capital export neutrality is generally upheld and capital would flow to its highest and best use throughout the world.[222] With relief from double taxation, the Administration proposal is unlikely to distort the flow of capital to or from the United States. Migration of individuals to tax havens would not alter this result. Most tax havens are small countries not suitable for substantial economic development. As such, real resources will flow to the same investments in the same countries as if the tax haven did not exist. The effect of the tax haven is not to alter international investment, but generally only the amount of taxes paid on the earnings from such investments.[223]

[221] See James R. Hines, Jr., "The Flight Paths of Migratory Corporations," *Journal of Accounting, Auditing, and Finance*, vol. 6 (Fall 1991), pp. 447-479, and Joel Slemrod, "Tax Haven, Tax Bargains and Tax Addresses: The Effect of Taxation on the Spatial Allocation of Capital," in Horst Siebert (ed.), *Reforming Capital Income Taxation*, (Tübingen: J.C.B. Mohr), 1990, pp. 23-42.

[222] For a discussion of the principle of capital export neutrality see, Joint Committee on Taxation, *Factors Affecting the International Competitiveness of the United States* (JCS-6-91), May 30, 1991.

[223] Tanzi, *Taxation in an Integrating World*, pp. 78-86.

F. Issues Relating to Double Taxation

1. Comparison of present law and the proposals

a. The current regime

Section 877 taxes the U.S. source income of a former citizen whose relinquishment of citizenship had tax avoidance as one of its principal purposes. Section 877(c) expands the definition of "U.S. source income" by treating as U.S. source gain from the disposition of certain assets that otherwise constitute foreign source income under other provisions of the Code. Thus, such income may be subject to double taxation (by the United States and the individual's country of residence).[224] However, if the individual is resident in a country that has an income tax treaty with the United States, double taxation may be alleviated either directly under the provisions of the treaty, or pursuant to the "competent authority" procedures of the treaty designed, in part, to resolve disputes.

b. The proposed departure tax

As discussed in Part III above, the proposals would deem a U.S. citizen's interests in properties as sold at fair market value immediately prior to the relinquishment (or deemed relinquishment) of citizenship. Such a regime could lead to double taxation in both the domestic and international context. In the domestic setting, for example, a former citizen subjected to the expatriation tax could be subject to the U.S. gift or estate tax on the same property.[225] Also, see Part V.H., below, for a discussion with respect to double taxation on interests in trusts. In the international area, when the individual disposes of the same asset, his or her country of residence may tax the gain, measured by the difference between the historical basis of the assets and the proceeds from the sale, thus resulting in double taxation. Furthermore, the jurisdiction in which the asset is located may also levy its tax on the gain realized.[226]

The Administration proposal would allow certain long-term residents to elect, for purposes of its departure tax, to step up the basis of their assets to fair market value at the time they become a U.S. resident. The modified bills would permit a similar election to resi-

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[224] In many cases where relinquishment of citizenship is for tax avoidance purposes, however, there may be no resident-country taxation of income from sources outside that country.

[225] The Senate amendment provides limited relief for taxpayers who are subject to section 2107 or 2501(a)(3) by allowing a credit of the expatriation tax against the U.S. estate or gift tax imposed under these sections. In other words, relief would be available only if the expatriate is leaving for tax avoidance purposes and, thus, subject to section 2107 or 2501(a)(3). Similar relief, however, is not available to a former citizen who is not expatriating to avoid U.S. taxes but, e.g., dies with properties located in the United States and whose estate is subject to U.S. estate tax.

[226] The letter dated May 12, 1995, from Leslie B. Samuels, Assistant Secretary of the Treasury (Tax Policy) (included in Appendix G) states the following:

"...we believe that this risk of double taxation is highly unlikely and can reasonably be viewed as a theoretical issue. First, in order for double taxation to occur, the expatriating taxpayer must move to a country which imposes a significant tax on his income. It appears that individuals who relinquish U.S. citizenship with substantial accrued gains *rarely* take up residence in a country that would impose significant taxes on these gains..." (emphasis added)

Despite the opinion stated in the letter, the cases litigated under section 877 involve taxpayers who relocated to countries with tax systems that are generally comparable with the U.S. tax system. None of the cases involve taxpayers who relocated to tax havens. In *Kronenberg v Comm'r*, 64 T.C. 428 (1975), the taxpayer, a Swiss national, moved back to Switzerland; in *Furstenberg v Comm'r*, 83 T.C. 755 (1984), the taxpayer was residing in France and became an Austrian citizen; in *DiPortanova v Comm'r*, 82-2 USTC para. 9598 (1982), the taxpayer was a resident of Italy; and in *Crow v. Comm'r*, 85 T.C. 376 (1985), the taxpayer became a resident of Canada.

dents or naturalized citizens of the United States.[227] The Treasury Department suggests that double taxation could be eliminated by other countries adopting a mirror provision.[228] Of course, if all other countries adopted the same rule (i.e., taxing gains accrued during an individual's residence in that country and giving a basis step-up for properties brought into the country by nonresidents), there would be no double taxation. However, very few countries currently impose a departure tax on former citizens and residents, and even fewer provide a fair market value basis for assets brought into the country by nonresidents. At the present time, Australia, Canada and Denmark are the only countries that allow a fair market value basis for assets brought into the country by nonresidents.[229] Consequently, unless one of the situations described below applies, double taxation will occur if an expatriating individual becomes a resident of another country that includes pre-immigration gains in its tax base upon the enactment of the departure tax.

The modified bills (introduced by Senator Moynihan and Representative Gibbons) would also allow an expatriate to irrevocably elect, on an asset-by-asset basis, to continue to be taxed as a U.S. citizen. To make the election, the individual must waive all treaty benefits.[230] Once an election is made, the individual would be taxed as a U.S. citizen on all income generated by the asset (e.g., interest and dividends) and any gain derived from its disposition. The same income may also be taxed by the individual's country of residence or the country where the asset is located, resulting in double taxation. Double taxation may be mitigated if the taxpayer is eligible for foreign tax credit relief (either under the tax law of the United States or the resident country) for the income derived from the asset. To be eligible for U.S. foreign tax credit relief, the income from the asset must constitute foreign source income. Under sections 861 and 862, interest and dividends are generally sourced according to the residence of the payor. Thus, interest and dividends paid by a U.S. corporation to a taxpayer who made the election is generally U.S. source income, and foreign taxes paid on such income would not be eligible for U.S. foreign tax credit relief. Consequently, a taxpayer who made the election to continue to be taxed as a U.S. citizen with respect to the stock of a U.S. corporation may be subject to double taxation on the dividend income if

[227] Under both the Administration proposal and the modified bills, the basis step-up election only applies to property held on the date the individual becomes a resident or citizen. It is unclear if the stepped-up basis would apply to certain property the basis of which is determined by the basis of property held on such date (i.e., carryover basis property in certain transactions that qualify for deferral of tax under secs. 351, 721, 1031 or similar provisions).

[228] See, letter from Leslie B. Samuels, Assistant Secretary of the Treasury (Tax Policy) dated May 12, 1995 (included in Appendix G).

[229] Germany permits a step-up in basis for shares of stock under a special regime in which gain from a disposition of substantial holdings (ownership of 25 percent or more of a German corporation). Israel exempts a portion of pre-immigration gain from tax. (See discussion in Appendix B.)

[230] An effect of the election is that the taxpayer would not be eligible for relief from double taxation provisions in the treaty between the United States and his or her country of residence. For example, such an individual may not claim relief from the so-called "three-bites-of-the-apple" rule designed to alleviate double taxation faced by a U.S. citizen resident in a treaty country. For an example of the rule, see Article 24(1)(b) of the Convention Between the Government of the United States of America and the Government of the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital.

the resident country taxes the income without granting a credit for the U.S. tax incurred by virtue of the election.[231]

Section 865 generally sources the income from the sale of personal property to the resident of the seller. In other words, gain from sale of personal property by a U.S. citizen[232] or resident is U.S. source and gain from a similar sale by a nonresident is foreign source. Although double taxation can occur if the election to be taxed as a U.S. citizen is made because, for example, gain on the disposition of an asset is considered domestic source by both the United States and the individual's country of residence, section 865(g) should mitigate double taxation in most cases. Under that section, gains from the sale of personal property by a U.S. citizen is treated as foreign source income if a foreign tax equal to at least 10 percent of the gain is incurred. Thus, if the requisite amount of foreign tax is paid, the gain would qualify as foreign source income eligible for U.S. foreign tax credit relief.

If the election in the modified bills is either not available or not made, an expatriate would be subject to double taxation. The burden of double taxation may be avoided if (1) the individual becomes a temporary or permanent resident in a tax-haven jurisdiction with no income tax, or (2) the individual becomes a resident in a country with an income tax system that excludes capital gains from its tax base.[233]

The discussion that follows addresses the issue of double taxation when an expatriate becomes a resident of a country that has an income tax treaty with the United States. However, someone who relinquishes U.S. citizenship to become a resident of a country that has no income tax treaty in force with the United States would not be entitled to any of the relief.[234]

2. Relief of double taxation under treaties

In general, one of the principal purposes of an income tax treaty is to avoid double taxation in instances where both treaty countries would otherwise tax a specified item of income. In the situation where a former U.S. citizen is subject to U.S. tax under section 877, the United States asserts its taxing jurisdiction over certain income of that individual based on the fact that he or she formerly was a U.S. citizen. At the same time, the person's new country of residence would be entitled to tax that person's income on account of his or her status as a resident of that country. An income tax treaty between the two countries may eliminate the potential for double taxation in one of the following ways:

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[231] If the election is made, the individual would not be eligible for statutory exemptions from U.S. tax on certain income that is paid to foreign persons. Examples include the exemptions for portfolio interest (sec. 871(h)), bank deposit interest (sec. 871(i)(2)(A)), and certain dividends paid by a so-called 80/20 U.S. company (sec. 871(i)(2)(B)).

[232] A U.S. citizen is generally treated as a U.S. resident under section 865(g)(1)(A)(i).

[233] For example, certain countries, including Austria, Germany and the Netherlands, have special provisions that exempt from tax the capital gains realized by individuals from the disposition of nonbusiness assets.

[234] The United States has 45 income tax treaties currently in force. Treaties with three more countries are currently pending before the Senate. The United States tax treaty network covers many important trading partners of the United States in Europe and Asia, but does not cover many countries in South America, Africa and the Middle East.

(a) The treaty does not preserve the right of a country to tax its former citizens (i.e., the so-called "saving clause" of the treaty does not expressly mention former citizens);

(b) The general treaty provisions provide relief from double taxation apply; or

(c) Pursuant to a taxpayer's request, the "competent authorities" of the two countries reach an agreement to alleviate double taxation.

a. Treaty saving clauses

Application under present law

All U.S. income tax treaties contain a "saving clause" or similar provision in which the United States generally reserves the right to tax its own citizens and residents as if the treaty had never come into effect. A survey of the 45 U.S. income tax treaties currently in force indicates that there are three types of saving clauses: (1) saving clauses that apply only to current citizens but do not expressly mention former citizens (23 treaties), (2) saving clauses that incorporate section 877 principles (i.e., they apply to current and former citizens for 10 years after the loss of citizenship if such loss had as one of its principal purposes the avoidance of tax) (18 treaties), and (3) saving clauses that apply to citizens and former citizens after the loss of citizenship regardless of the reason for such loss (4 treaties). These three types of saving clauses will be referred to as Category I, II, and III saving clauses, respectively, hereinafter. (See Appendix A for a listing of U.S. tax treaties that fall within the various categories.)

Although section 877 does not describe its interaction with tax treaties, the legislative history of the 1966 Foreign Investors Tax Act indicates that section 877, as well as the other provisions enacted, were not intended to override existing tax treaties.[235] In Rev. Rul. 79-152, 1979-1 C.B. 237, the IRS concluded that the United States could tax its former citizens under section 877 even if the saving clause of a particular treaty expressly covered only U.S. citizens. However, in *Crow v. Comm'r*, 85 T.C. 376 (1985), the Tax Court held that without any specific reference to former citizens in the saving clause, the United States could not apply section 877 to override the prior U.S.-Canada tax treaty and tax a former citizen's U.S. source capital gains. The Tax Court's holding, thus, brought into question the validity of Rev. Rul. 79-152, at least with respect to treaties entered into before the enactment of section 877. Therefore, if a treaty with a particular country contains a Category I saving clause, an expatriate resident in that country may claim treaty protection from the application of section 877.[236]

Application under the proposals

The proposed departure tax theoretically would be imposed when the individual is still a citizen or resident although the tax is actually imposed no earlier than the time of actual expatriation and in various situations the tax is imposed substantially after the actual

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[235] See section 110 of Foreign Investors Tax Act, P.L. 89-809.

[236] A taxpayer that claims treaty protection from section 877 may be required to file a tax return disclosing that treaty-based tax position. (See sec. 6114.)

expatriation. If the tax is deemed to be imposed on an individual while he or she is still a U.S. citizen or resident, the United States would be permitted to impose such a tax without regard to the precise formulation of the saving clause. However, the proposed departure tax would be imposed on individuals in a variety of circumstances which would be later than the date on which U.S. citizenship is lost under the U.S. immigration statutes.[237] In these cases, the tax would be imposed on individuals who are no longer citizens under the U.S. immigration statutes (i.e., individuals who committed expatriating acts with the intent of relinquishing their U.S. citizenship at a date prior to notifying the State Department of their action).

As discussed above, U.S. tax treaties currently in force contain three types of saving clause provisions. In the vast majority of cases (41 out of 45 existing treaties) the United States may not impose its taxing jurisdiction on a former citizen whose loss of citizenship did not include tax avoidance as a principal purpose. Hence, an individual who is resident in a country that has concluded a treaty with the United States containing either a Category I or II saving clause, may challenge being classified as a U.S. citizen for purposes of the departure tax.[238] If the individual is successful in rebutting "citizen" classification, the United States would be precluded from imposing the departure tax. On the other hand, if such an individual does not prevail in his or her challenge, the saving clause of a U.S. treaty would permit the United States to impose the departure tax.

b. Relief from double taxation

Application under present law

Unilateral efforts by countries to limit double taxation of income earned by residents of either country are often imperfect because of inconsistencies in taxation under the local laws of the treaty partners.[239] One of the primary purposes of entering into an income tax treaty is to limit double taxation. In certain cases, double taxation may be ameliorated by the "Relief from Double Taxation" article that is typically incorporated into an income tax treaty as an exception to the saving clause. For example, if a U.S. citizen is a resident of the treaty country, such an article generally specifies which country is permitted to impose its tax on a particular category of income, and which country is obligated to relieve double taxation by yielding its tax jurisdiction (e.g., by providing a particular item of income is sourced within one country and requiring the other country to grant a credit for the tax paid to the source country). However, in the case of a *former citizen*, there generally will

[237] See discussion under Part IV.B., above, with respect to the issues raised by the proposals to tax a former citizen as a citizen.

[238] The Treasury Department has publicly stated that the proposals are not intended to override U.S. tax treaty obligations. See remarks by Joseph H. Guttentag, International Tax Counsel of the Treasury Department, at the Federal Bar Association's 19th Annual Tax Conference, 95 TNI 47–6.

[239] The U.S. foreign tax credit mechanism operates to provide a credit against a taxpayer's U.S. income tax liability for foreign income taxes paid on foreign source income. However, if an item of income that is subject to foreign tax is treated as domestic source by both the United States and the foreign country, the taxpayer would not be permitted to claim a foreign tax credit in the United States for the foreign tax paid and the foreign country would likewise not permit a credit for taxes paid by the taxpayer to the United States.

be no relief in instances where income taxable under section 877 is subject to double taxation.[240]

Application under the proposals

A former citizen subject to the proposed departure tax would be in some respects in a similar situation with respect to double taxation as someone taxed under present law section 877. The situation would be exacerbated under the proposals because the gain from a disposition of the asset may not be realized until many years after the deemed U.S. sale. Such individuals generally would not be eligible for any specific relief from double taxation under existing U.S. tax treaties.

c. Competent authority relief

Application under present law

A taxpayer may request competent authority assistance pursuant to the "Mutual Agreement Procedure" ("MAP") article of an income tax treaty if the actions of the United States, its treaty partner, or both countries result in taxation that is contrary to the provisions of the applicable tax treaty, including double taxation of the same income.[241] The MAP articles of U.S. tax treaties generally grant the competent authorities broad authority to consult and resolve double taxation issues regardless of whether they are specifically covered by the treaty.[242] Under this procedure, a case-by-case determination is made based on the specific facts and circumstances of a particular taxpayer's situation. A decision made by the competent authorities with respect to a particular taxpayer has no precedential effect with respect to any other taxpayers.

Rev. Proc. 91-23, 1991-1 C.B. 534, sets forth the procedures with respect to requests for assistance of the U.S. competent authority in resolving instances of taxation in contravention of the provisions of an income, estate or gift tax treaty to which the United States is a party. To be eligible for U.S. competent authority relief, the taxpayer must be a U.S. person as defined in section 7701(b)(30).[243] Consequently, a former citizen subject to tax under section 877 is not eligible for such relief. Instead, such an individual would request assistance from the competent authority of his or her country of residence. If the case is accepted, the foreign com-

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[240] Treaty relief is available only in limited circumstances. An example of such relief is found in the Convention Between the Government of the United States of America and the Government of the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (the "U.S.-Mexico Treaty"). Under Articles 13 and 24 of the Treaty gains derived by a resident of Mexico from the sale of the stock of a U.S. company may be taxable by both the United States and Mexico if the shareholder owned at least 25 percent of such company for the 12-month period preceding the sale. If the gain is taxed by the United States, then the amount would constitute U.S. source income and the taxes paid to the United States would be eligible for foreign tax credit relief under the Mexican laws. Therefore, if a former citizen resident in Mexico who is subject to section 877 satisfies the requirements set forth in the Articles, the gain from the disposition of the stock would be U.S. source income under the treaty (as under sec. 877(c)), and Mexico would be obligated to cede primary taxing jurisdiction on such income.

[241] All existing comprehensive U.S. income tax treaties, with the exception of the treaty with Ireland, contain a MAP article. All existing comprehensive U.S. income tax treaties, with the exception of the treaty with Ireland, contain a MAP article.

[242] Article 25(3) of the 1981 U.S. Model Treaty provides that the competent authorities shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the treaty. Additionally, the competent authorities may also consult on issuesnot expressly stated in the treaty for the purpose of eliminating double taxation.

[243] Section 3.05 of Rev. Proc. 91-23.

petent authority would contact its U.S. counterpart for consultation and to attempt to resolve the issue. Although the competent authorities are expected to reach a mutual agreement, it is possible that they reach an impasse in some cases. If that happens, the taxpayer would suffer a significant tax burden caused by double taxation. Even if the competent authorities agree to review the case, the process can be time consuming (and hence, costly) for the taxpayer.[244] The Joint Committee staff has been advised that the U.S. competent authority has been presented with no cases regarding double taxation issues arising under section 877 or analogous issues.[245]

Application under the proposals

If the proposed departure tax is enacted, an individual subjected to the regime (e.g., someone who took a formal oath to renounce his citizenship after the effective date) who subsequently disposes of an asset subjected to the deemed sale provision essentially would be in the same position as a former citizen subjected to U.S. tax under section 877. In other words, such a taxpayer generally would suffer double taxation if his or her resident country taxes the same income notwithstanding the fact that the resident country has in force an income tax treaty with the United States.[246] It appears that without specific relief under a treaty, a former citizen who disposes of his or her assets after becoming a resident of a treaty country may be subject to double taxation. It is uncertain whether double taxation relief would be obtained under the MAP article. For example, the United States may decide not to cede its taxing jurisdiction in these instances. If that happens, unless the taxpayer's country of residence provides unilateral relief, the individual would be subject to double taxation.

To the extent the departure tax applies to an individual, the tax would be imposed when an individual is still a U.S. citizen; thus, the gain would constitute U.S. source income under section 865 and foreign tax credit relief would not be available.[247] Commentators have suggested that it would be appropriate for the United States, in future treaty negotiations, to include provisions to address the double taxation issue.[248]

d. Experience of other countries that impose similar taxes on former citizens or residents

Very few countries currently impose taxes on former citizens or residents.[249] In the case of countries that tax former citizens or residents, the regimes are substantially less expansive than the

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[244] The letter dated May 23, 1995, from IRS Commissioner Margaret Milner Richardson, Exhibit A (included in Appendix G), shows that the average days for the processing time of "Non-Allocation" cases (i.e., cases not involving transfer pricing disputes) from 1990 to 1994 range from 377 to 726 days.

[245] See, letter dated May 23, 1995, from IRS Commissioner Margaret Milner Richardson (included in Appendix G).

[246] It is uncertain if the proposed U.S. expatriation tax would constitute a creditable tax in a taxpayer's new country of residence.

[247] The unrealized gain would not be taxable by a foreign country at the same time the U.S. expatriation tax is imposed. Consequently, the income would remain U.S. source under section 865(a) and the special rule of section 865(g) (to convert U.S. source income into foreign source income if at least a 10 percent foreign tax is paid) would not be applicable.

[248] See testimony of Stephen E. Shay before the Subcommittee on Oversight of the House Committee on Ways and Means, March 27, 1995.

[249] See Appendix B for a comparison of the different regimes.

ones currently proposed. There is limited experience regarding the relief of double taxation caused by the operation of departure tax or similar taxes. The following is a description of instances in the U.S. treaties with Canada and Germany where provisions of those treaties are designed to alleviate double taxation. As the discussion reveals, the solutions offered by bilateral treaties are somewhat limited.

Canada

Canada imposes a departure tax upon the termination of Canadian residence, irrespective of citizenship, that is somewhat similar to the proposed U.S. tax on expatriation. The same issue of double taxation arises when an individual leaves Canada to become a resident in another country. Under U.S. internal law, if an individual left Canada to become a U.S. resident, the statutory basis provisions set forth in sections 1001 and 1011 would not permit the individual to obtain a step up in the basis of assets that were acquired prior to the time that he or she became a U.S. resident.[250] Consequently, the individual could be subject to double taxation when the assets were later sold. The Convention Between the United States of America and Canada With Respect to Taxes on Income and on Capital ("U.S.-Canada Treaty"), however, provides limited relief to U.S. residents who are subject to the Canadian departure tax upon the termination of their Canadian residence.

The U.S.-Canada Treaty contains rules to determine whether the resident or the source country may tax the gains realized by taxpayers upon the disposition of personal property. The country of residence generally has the sole right to tax such gains.[251] An exception is available to preserve the right of either country (primarily Canada) to apply its departure tax to a U.S. resident.[252] Under the internal law of Canada, a taxpayer is generally subject to the departure tax in the year of relinquishment of Canadian residence. Individual taxpayers may, however, elect to postpone the taxable event with respect to certain assets until the item is sold.

A special election is available under the U.S.-Canada Treaty to render taxpayers as having sold and repurchased, for U.S. tax purposes, the same assets taxed under the Canadian deemed sale regime. The effect of the election is to achieve a basis step-up in the assets for U.S. tax purposes.[253] The "Elimination of Double Taxation" article of the Treaty considers the gain from the deemed sale as *U.S. source income*.[254] Consequently, the United States, as the source country, may assert primary taxing jurisdiction over the income, and Canada will credit any U.S. tax imposed on such gain against the Canadian departure tax (i.e., ceding primary taxing jurisdiction to the United States). From the taxpayer's perspective, double taxation is avoided. The same result is generally achieved by a taxpayer who postpones the taxable event for Canadian tax purposes. When such a taxpayer disposes of his or her assets, the

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250 See G.C.M. 34572, August 3, 1971.
251 See U.S.-Canada Treaty, Article XIII(1).
252 See U.S.-Canada Treaty, Article XIII(5).
253 See U.S.-Canada Treaty, Article XIII(7).
254 See U.S.-Canada Treaty, Article XXIV(3)(b).

gain also would constitute U.S. source income under the same provision of the Treaty.

However, if the taxpayer fails to make the election under Article XIII(7) of the Treaty and there is no deferral of the Canadian departure tax, double taxation will occur. No step-up in basis will be available for the gain taxed by the Canadian regime (because the deemed Canadian sale does not give rise to a realization event under U.S. tax principles). Thus, if the taxpayer disposes of the asset in a taxable transaction in a subsequent year, he or she will be required to compute the gain or loss using the adjusted basis of the asset under U.S. tax principles. The gain realized generally will be *U.S. source* income under section 865(a)(1); as a result, the Canadian departure tax paid may not be credited against the U.S. income tax liability on such sale.

If a U.S. resident pays the Canadian departure tax, he or she may use the amount as a credit to offset U.S. tax imposed on other similar *foreign source income*. The foreign tax credit may be carried back for two years or carried forward for five years.[255] If there is no other foreign source income and the individual suffers a double tax burden, he or she may request relief from the competent authorities under the MAP article of the Treaty. Because competent authority relief is discretionary, there is no guarantee that relief would be available to eliminate the burden of double taxation.

Germany

Germany also taxes former citizens and residents under limited circumstances. Under Article 13(6) of the Convention Between the United States of America and the Federal Republic of Germany for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income and Capital and to Certain Other Taxes ("U.S.-Germany Treaty"), gains from the disposition of assets not otherwise dealt with by the Treaty are taxable in the country in which the taxpayer is a resident. An exception, however, exists to preserve the right of either country (primarily Germany) to tax certain gains from the disposition of stock by a former resident if the seller is a substantial shareholder (i.e., owns at least 25 percent of the stock of a German company) and he or she disposes of the stock within 10 years of giving up German residence. The gain taxable under this provision is limited to the amount that reflects appreciation in the stock while the taxpayer was a German resident.

The Treaty generally requires the United States to provide a fair market value basis (as of the date on which the individual has ceased to be a resident of Germany) of the shares in calculating any gain on the disposition of the shares for U.S. tax purposes.[256] In the absence of this special provision, the United States would require the taxpayer to compute the gain or loss from the disposition using the adjusted basis of the shares, as determined under section 1011. Thus, the effect of the provision is to preserve the right of Germany to impose its internal taxation on former resi-

[255] See section 904(c).

[256] The treaty does not prevent the United States from taxing any gain accrued during the period that taxpayer was a German resident if such amount has not been subject to tax in Germany.

dents (who are U.S. residents at the time of disposition) on certain stock gains accrued while the individual was a German resident. The United States may tax only the portion of the gain accrued after the individual has terminated his or her residence in Germany.

Although the terms of the Treaty provision grant reciprocal taxation rights and obligations, the provision of Article 13(6) currently applies chiefly to German tax on U.S. residents, because internal U.S. tax law does not contain a similar rule. Hence, the German negotiators of the treaty essentially obtained a concession from the United States in ceding taxing jurisdiction to Germany with respect to the gain accrued during the period of an individual's residence in Germany.

G. Impact of the Proposals on Existing Tax Treaties and Future Treaty Negotiations

1. Impact on current treaty obligations

Although the proposals theoretically impose a departure tax immediately prior to the time when a U.S. citizen relinquishes citizenship, the tax is, in various situations, imposed substantially later than the relinquishment.[257] Under present law, the U.S. tax laws follow the relevant provisions of the INA in determining when citizenship terminated.[258] An individual's citizenship terminates on the date he or she takes the oath of formal renunciation, or on the date he or she commits an expatriating act (e.g., acquires citizenship of another country) with the intent of relinquishing U.S. citizenship, even though the action is not reported to the State department until a later date.[259]

In the latter case, an issue arises as to whether the departure tax may be imposed on an individual who is no longer a U.S. citizen under the INA. For example, assume the following facts:

> Ms. A acquired citizenship of Country X on January 1, 1990, with the intention of relinquishing U.S. citizenship. The relinquishment did not have tax avoidance as one of its principal purposes. Country X has an income tax treaty with the United States. The treaty contains a saving clause which preserves the right of the United States to tax its citizens and former citizens for ten years after the loss of the individual's citizenship if such loss is due to tax avoidance reasons. Ms. A appears before a consular officer on February 6, 1995, to notify the State Department of the fact that she committed an expatriating act on January 1, 1990, with the intent to relinquish her citizenship. The State Department issued her a Certificate of Loss of nationality on June 1, 1995, confirming that Ms. A's U.S. citizenship terminated, effective January 1, 1990.

Under the proposals, Ms. A would be subject to the departure tax even though she had not been a U.S. citizen under applicable U.S. tax law for over five years. Furthermore, she would also be reinstated as a U.S. citizen for tax purposes from January 1, 1990, through February 6, 1995.[260] An issue that arises is whether the United States may properly impose the departure tax on Ms. A under the saving clause provision of the treaty between Country X and the United States. Bilateral U.S. income tax treaties do not define the term "citizen." Unless otherwise provided, the parties generally look to the tax laws of the country that taxes the particular income for the definition of undefined terms.[261] However, if any of

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[257] See discussion under Part IV.B. with respect to the issues raised by the proposals to tax a former citizen as a citizen.

[258] See Rev. Rul. 92-109, 1992-2 C.B. 3 and Treas. Reg. section 1.1-1(c).

[259] See 8 U.S.C. 1481 and 8 U.S.C. 1488.

[260] For tax purposes, Ms. A's U.S. citizenship does not terminate until either February 6, 1995 (under the Senate bill and the modified bills) or June 1, 1995 (under the Administration proposal).

[261] See Article 3(2) of the 1981 Proposed U.S. Model Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion (the "1981 U.S. Model Treaty"). The provision also states that the competent authorities of the treaty countries may also agree to a common meaning for any undefined term upon request by taxpayers under the "Mutual Agreement Procedure" of the treaty.

the proposals are enacted, there will be a conflict under U.S. internal laws (i.e., the Immigration and Nationality Act and the Internal Revenue Code) as to when an individual ceases to be a U.S. citizen. As a result, a taxpayer in Ms. A's situation may take the position that the departure tax does not apply because it was imposed after she ceased to be a U.S. citizen. It is uncertain whether such a position will prevail.

Even if it is determined that the tax definition of the term "citizen" controls, another issue is whether the tax definition of the term "citizen" that existed at the time the treaties were signed controls (i.e., a static interpretation) or that when the treaties are being applied controls (i.e., an ambulatory interpretation). The 1981 U.S. Model Treaty does not address the issue of whether an undefined provision or phrase in a treaty should be interpreted in a static or in an ambulatory manner. However, the United States has adopted the ambulatory approach in a case interpreting the meaning of certain terms in the U.S.-U.K. treaty. In Rev. Rul. 80-243, 1980-2 CB 413, the IRS denied a U.K. corporation certain deductions in computing its U.S. taxable income (taxable under sec. 882) despite the fact the provision that disallowed such deduction was not in the Code at the time the U.S.-U.K. treaty was signed.[262]

The commentaries to the 1992 OECD Model Tax Convention on Income and Capital (the "1992 OECD Model Convention") suggest that the law in force when the Convention is being applied should determine the meaning of undefined terms "only if the context does not require an alternative interpretation."[263] The commentaries imply that the intent of the treaty countries upon the signing of the treaties and any conflict regarding the meaning of the terms under the laws of the countries be part of the consideration in determining whether an alternative interpretation is warranted. The objective, according to the commentaries, is to strike a balance between ". . . the need to ensure permanency of commitments undertaken by States when signing a convention (since a State should not be allowed to empty a convention of some of its substance by amending afterwards in its domestic law the scope of terms not defined in the Convention) and . . . the need to be able to apply the Convention in a convenient and practical way over time (the need to refer to outdated notions should be avoided)."[264]

It is unclear whether the static or the ambulatory approach is more theoretically sound.[265] Two countries that are signatories to a bilateral treaty may apply different approaches to the same situation, resulting in a dispute. Such a conflict may be resolved by mutual agreement between the competent authorities of the treaty countries.[266]

If Ms. A is successful in avoiding being categorized as a citizen for purposes of the departure tax, she theoretically may still be subject to the tax as a former citizen. As illustrated in Appendix

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[262] See also PLR 7844008, July 26, 1978, on which the revenue ruling was based.

[263] See paragraph 12 of the commentaries to Article 3(2) of the 1992 OECD Model Convention.

[264] See paragraph 13 of the commentaries to Article 3(2) of the 1992 OECD Model Convention.

[265] See J. Ross Macdonald, *Annotated Topical Guide To U.S. Income Tax Treaties*, Vol. 2, Section 12 "Undefined Terms," p. 1355.

[266] See the Treasury Department, "Technical Explanation of the Treaty on the Convention between the United States of America and the Kingdom of Spain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect with Respect to Taxes on Income Signed at Madrid on February 22, 1990," on Article 3(2).

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A, substantially all of the bilateral U.S. treaties that contain saving clauses permitting the United States to tax its former citizens require the loss of citizenship to be tax motivated. Because the proposed departure tax is designed to tax all expatriates who have a certain level of gain regardless of their reasons for relinquishing their citizenship, the Category II saving clause provision (i.e., the one that preserves the right of the United States to tax its former citizens whose loss of citizenship is tax motivated) would not permit the United States to impose the departure tax on someone who did not expatriate for tax avoidance motives.

To alter this result, all of the existing U.S. tax treaties that contain Category I and II saving clauses (41 out of the 45 treaties currently in force) would have to be renegotiated to allow the United States to impose a departure tax on its former citizens regardless of the intent to relinquish their citizenship. Only four U.S. income tax treaty currently in force, namely the U.S. treaties with the Czech Republic, Hungary, Russia Federation and the Slovak Republic, do not require tax avoidance to be present in order for the United States to tax its former citizens who are residents of the treaty partner. There is no evidence to suggest that U.S. citizens are expatriating with the objective of becoming residents or citizens of these countries, for tax avoidance or otherwise.

2. Impact on future treaty negotiations

As discussed above, if a departure tax is enacted, the United States would need to renegotiate existing treaties to impose the tax on former citizens who have legally relinquished their citizenship on an earlier date under the applicable U.S. law. For the following reasons, our treaty partners may object to the United States' imposition of the departure tax on unrealized income of individuals who became residents of their country:

First, they may prefer to preserve for their own residents the benefits under the treaty (i.e., not subject to U.S. taxing jurisdiction).

Second, they may resist the continuing expansion of taxation by the United States based on citizenship status.

Third, they believe that they will lose revenue if they cede to the United States primary jurisdiction over non-U.S. source income.[267]

In order to extract such a concession from our treaty partners during the negotiation process, it probably would be necessary for the United States to forego certain other benefits to obtain a balance of benefits under the treaties. Furthermore, to resolve the issue of double taxation by renegotiating existing treaties, the following options could be considered:

(1) The United States could preserve its right to have primary taxing jurisdiction over the gain from the deemed sale, and the treaty partner could grant a step-up in the basis to the extent of such gain. This alternative is modelled after Article 13(6) of the U.S.-Germany Treaty (discussed above) and would require a treaty partner to cede to the United States its right to tax

[267] See Roberts, "Is Revenue Ruling 79-152, Which Taxes an Expatriate's Gain, Consistent With the Code?," *51 J. Taxation* 204 (1979).

the gain accrued while the individual is a U.S. citizen or long-term resident.

(2) The United States could cede to its treaty partner the primary taxing jurisdiction over the gain from the deemed sale by giving a foreign tax credit for taxes paid by the expatriate to the treaty partner. This alternative is generally modelled after Articles XIII(5), XIII(7) and XXIV(3)(b) of the U.S.-Canada Treaty (discussed above).

(3) The United States could preserve its right to have primary taxing jurisdiction over the gain from the deemed sale, and the treaty partner could grant a credit for U.S. taxes incurred despite the fact that the realization event in the foreign country occurs later. This alternative is a modification of the provisions under the U.S.-Canada Treaty (discussed above). This is the converse of the second alternative mentioned above and would require a treaty partner to cede its right to tax gain (and hence, cede a portion of the revenue currently collected by its fisc) of a resident to the extent the gain is taxed by the United States under the proposals.

H. Mark to Market Issues; Treatment of Trusts

All three versions of the expatriation proposal (i.e., the Administration proposal (included in H.R. 981 and S. 453), the Senate bill (amendment to H.R. 831), and the modified bills, introduced by Senator Moynihan (S. 700) and Representative Gibbons (H.R. 1535)) would require the marking to market of: (1) all interests of an expatriating individual that would have been included in that individual's gross estate were that individual to die immediately before expatriating; (2) any other interest in a trust which the expatriating individual is treated as holding or the assets underlying such trust interests; and (3) other property interests specified in Treasury Regulations necessary to carry out the purposes of the proposal.

For purposes of the proposals, a beneficiary's interest in a trust generally would be based on all of the facts and circumstances. If interests in a trust could not be determined on the basis of facts and circumstances, the rules are different under the various proposals. Under the Administration proposal and the Senate bill, the beneficiary with the closest degree of family relationship to the grantor would be presumed to hold such remaining trust interests. In the event that two or more beneficiaries have the same degree of kinship to the grantor, they would be treated as holding the remaining trust interests equally. Under the modified bills, the ownership of a trust interest (not determined under the facts and circumstances test) would first be allocated to a grantor if a grantor is a beneficiary of the trust. Otherwise, the ownership of such a trust interest would be based on the rules of intestate succession.

The facts and circumstances test, however, does not apply to a grantor trust (or any portion of a trust treated as a grantor trust). Under the various proposals, only the grantor of a grantor trust would be treated as owning an interest in the trust; thus, beneficiaries (other than the grantor) would not be required to mark to market their interests in such a grantor trust if they were to expatriate.

1. Problems of applying a mark-to-market provision to property interests generally

a. In general

A number of issues are raised by the proposals to mark to market interests in property. These problems generally can be divided into three categories: (1) ownership—identifying the person who would bear the tax if the appreciated property were sold; (2) liquidity—providing the opportunity for the taxpayer to raise funds from the interests with which to pay the tax; and (3) valuation—determining the value of such interests. The problems often are related—something that makes it difficult to determine who owns an interest in property often makes that interest very illiquid which, in turn, makes the value of such interests difficult to determine.[268]

Many of these problems are especially difficult in the case of interests held through trusts. As discussed above, the various propos-

[268] Similar liquidity and valuation concerns arise under the estate tax; identifying the owner of property, however, generally is easier in the estate tax context.

als all provide a special regime applicable to trusts. Consequently, the discussion that follows will focus largely on interests held in trust. It is should be noted, however, that similar problems can arise with respect to other property interests, such as interests in closely-held partnerships.

b. Ownership

Income interests and life estates

Certain interests in property entitle the owner to the income from, or the use of, property for a period of time, such as a term for years or the lifetime of a person or group of persons. These interests are commonly referred to as "income interests" or "life estates". Upon termination of the income interest(s) or life estate, the property then passes to a subsequent holder, called a "remainderman" if that person is not the original transferor of the property or a "reversionary interest" if the property returns to the original transferor of the property.

A question arises under the various proposals as to whether an owner of an income interest or life estate should be subject to the expatriation tax. This may depend upon which of the two purposes articulated by the Administration for the tax is applicable. If the tax is designed to tax the appreciation in asset value that accumulated while individuals enjoyed the benefits of U.S. citizenship or residence, an income interest or life estate seemingly should not be subject to tax—an income beneficiary has no beneficial interest in the appreciation and, thus, does not directly benefit from the appreciation in the asset. If, however, the tax is a proxy for the tax that would have been owed had the individual remained a U.S. citizen or resident, a tax arguably should be imposed on the value of the interest held by the income beneficiary at the time of expatriation, since this value represents part of the future income stream that would have been taxed had the person not expatriated.

Regardless of the articulated rationale, the various proposals may provide inconsistent results in the case of legal income interests, income interests held in trusts, and other future income streams.[269] For example, where the expatriating individual had an income interest for the life of another person (i.e., an estate "per autre vie") or for a term of years, all three versions would require a marking to market of such an interest (whether held in trust or not), because that person's gross estate would have included such an interest were the expatriating individual to die on the date of the expatriation. Also, all three versions would apply to all life estates *held in trust* even where the measuring life is the life of the expatriating individual. Thus, in these cases, a tax would be imposed on the holder of the income interest, even though he or she would never receive any of the gain when the underlying assets are actually sold. Moreover, the proposals do not modify the rules of section 1001(e). As a result, the basis of any income or term interest that is required to be marked-to-market would be zero and the

[269] The Treasury Department would have regulatory authority to expand the types of property subject to the expatriation tax beyond items that would be included in the expatriate's estate and interests in trust. Thus, the inconsistent treatment could be eliminated if the Treasury Department determines to extend the tax to the property interests discussed below not expressly subject to the tax.

tax would be imposed on the full value of the income or term interest. The taxation of these types of income interests appears to be contrary to the first articulated purpose for the proposal, but would be consistent with the second articulated purpose of the proposal.

While all three proposals would tax all income interests held in trust and nontrust income interests that do not terminate at the expatriate's death, the proposals would not expressly tax certain other types of income interests. For example, the three versions of the proposal apparently would not impose a tax on the value of certain future income streams not held in trust (e.g., interest on unappreciated bonds and dividends on unappreciated stocks), where there is no appreciation in value to subject to tax.[270] Also, they apparently would not require the marking to market where the expatriating person has only a legal life estate interest (not in trust) where the measuring life is that of the individual who expatriates because such a life estate is not includible in the life tenant's gross estate. Thus, in these cases, no tax would be imposed even though the holder is entitled to a future income stream which would have been taxed had he or she not expatriated. The failure to impose a tax on these types of property interests appears contrary to the second articulated purpose for the proposal and would be inconsistent with the treatment of other income interests subject to tax under the proposals.

Contingent interests

In many circumstances, the identity of the owner of the property depends upon events occurring subsequent to the time that the property interest is being marked to market. Interests in property, both held outright or in trust, often depend upon the happening of a future event. It is not atypical for the identity of the remainderman to depend upon a future event. For example, it is common for there to be a transfer of an income interest to an individual (e.g., a spouse) for life, followed by a remainder interest to any children who are alive at the spouse's death. Prior to the spouse's death, each child is said to own a "contingent remainder" since ownership for each child is dependent upon that child surviving the spouse.

Where the expatriating individual has a remainder interest that either is not contingent or is contingent upon an event other than his survival of the life beneficiary, the proposals would require a marking to market of the interest (whether held in trust or not), because that person's estate would have included the interest were the expatriating individual to die on the date of the expatriation. Also, all three versions would apply to any remainder interest *held in trust*, including those where the remainder interest is contingent upon the expatriating individual surviving the life beneficiary, because the remainderman clearly has an interest in the trust. The proposals, however, apparently would not require the marking to market where the expatriating person has a remainder interest (not held in trust) contingent upon his or her survival of the life

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[270] In contrast, other types of income streams for which the individual has a low basis (e.g., fee income from service contracts) would be subject to tax because such interest would be includible in the gross estate of an expatriate if he or she were to die on the date of expatriation and the value of the interest exceeds its basis.

beneficiary, because such an interest is not includible in the remainderman's gross estate and is not an interest in a trust. Thus, as with the treatment of life estates, the proposals may have inconsistent results depending upon whether a remainder interest is held in a trust or not.[271]

Also, because a contingent remainder interest would be marked to market in certain of the cases discussed above, the expatriation tax could be imposed on a person who never obtains the property underlying the contingent interest. As a result, several commentators have raised the issue whether a refund would be available when it is determined that the contingent remainderman will never receive the property. The Treasury Departrment responds to this issue as follows:

> The issue of whether a contingent beneficiary who ultimately receives no distribution from a trust would be entitled to a refund of the tax on expatriation is resolved in the same way that Congress resolved the issue in the estate and gift tax area. In that area, the decedent or donor is generally required to value the asset as of the date of transfer. If the asset subsequently turns out to be worth a different amount (either more or less than the estimate on the date of death), there is no adjustment to the estate or gift taxes paid. Senator Moynihan's bill gives an expatriate an additional alternative that is not available for estate and gift tax purposes. The Moynihan bill allows an expatriate to defer the taxable event until the asset is sold or transferred. Thus, an expatriate is faced with a choice: he or she can pay the expatriation tax up front, or he or she can elect to defer tax until he realizes income from the trust.[272]

Discretionary distributions and powers of appointment (or withdrawal powers)

One significant benefit to a grantor of transferring property through a trust is to postpone the determination of when distributions of income or corpus of the trust will be made. Where the grantor wishes to transfer the property but determine at a later time who is to benefit from the transferred property, the grantor would retain, or grant to the trustee or third person, discretionary powers to distribute income or corpus among a class of beneficiaries. Where the grantor wishes to delegate to another the determination of whom is to benefit from the transfer, the grantor would grant to those other person or persons powers to distribute income or corpus.

In these cases, determining the identity of the actual beneficiaries prior to the making of distributions is very difficult. The proposals would base this determination on various facts and circumstances, including any letters of wishes or similar documents and historical patterns of trust distributions. It is unclear, how-

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[271] Again, this inconsistent treatment could be eliminated if the Treasury Department, under its proposed regulatory authority, extends the tax to contingent interests not expressly subject to the tax under the various proposals.

[272] See letter from Assistant Secretary of the Treasury (Tax Policy) Leslie B. Samuels, dated May 2, 1995 (included in Appendix G).

ever, whether subsequent distributions would actually follow these facts and circumstances, e.g., historical patterns often change over time. Moreover, absent such facts and circumstances, the determination of ownership (1) under the Administration proposal and the Senate bill would be based on degree of kinship, and then, absent any kinship or an equal degree of kinship, likely would be based on certain arbitrary factors, such as the number of discretionary beneficiaries, and (2) under the modified bills would be based on the laws of intestate succession.[273] In either case, these determinations have no direct correlation to who the actual beneficiaries of the trust will be. Thus, like the treatment of contingent remainderman, the proposals may impose a tax on a beneficiary who never actually receives the property underlying his or her interest.

c. Liquidity

Imposing a tax on a deemed sale of assets that are not readily tradeable may result in a forced sale at prices that depress their value. Rules which permit the payment of the tax at a later time provide additional time to orderly dispose of the property, but still require disposition of the property in order to raise funds with which to pay the tax. If the deferred payment rules require the payment of interest, the effective rate of the tax is increased to the extent that the after tax income or gain from the delay may be less than the interest imposed during the period of the deferral.

Interests in trusts often provide significant liquidity problems because there is rarely an ongoing market for interests in trusts. Contingent interests in trusts, by their very nature, are illiquid since the nature of some contingencies are very difficult to predict. Also, trust beneficiaries often have no access to trust assets with which to pay the tax. Grantors of trusts often include provisions designed to prevent the beneficiaries from obtaining economic benefit from their interests in the trust sooner than the grantor wishes. These provisions include spendthrift provisions (which prevent the trust interest from being transferred or pledged), forfeiture provisions (which terminate a beneficiary's interest in a trust if that beneficiary attempts to sell or pledge his interest in the trust), and trust interests that are dependent on the discretion of a grantor, trustee, or other person.

The Administration proposal only dealt with these liquidity issues with respect to interests in a closely-held business. Under the proposal, an expatriating individual could enter into an agreement to defer payment of the tax imposed with respect to an interest in a closely-held business for up to five years (under sec. 6166). The Senate bill took a different and more expansive approach—it allowed the IRS to agree to defer the payment of the tax on any asset for up to 10 years (under sec. 6161). The modified bills provide significantly more flexibility to taxpayers with illiquid assets. First, the modified bills would provide the same section 6166 relief for closely-held business offered by the Administration proposal, and an expanded version (i.e., no statutory time limit) of the section 6161 relief for all assets offered by the Senate bill. Second, the

[273] See Part V.H.2.c. hereof for a further discussion of the closest in kinship and intestate succession rules.

modified bills would allow an extension of time for remainder or reversionary interests under section 6163. Third, the Treasury Secretary may agree to collect the tax in installments under section 6159 in order to facilitate the collection of the tax. Fourth, the modified bills would provide an election that allows a taxpayer to continue to be taxed as a U.S. citizen or resident on assets that the taxpayer designates. Thus, if the election were made, no U.S. tax would be imposed on the designated assets until disposition, gift or bequest.

Any election to defer payment of the expatriation tax (or to continue to be taxed as a U.S. citizen or resident) generally would require that the expatriating individual enter into a security agreement with the IRS. The provision of security could be expensive and also very difficult, particularly for remaindermen and discretionary beneficiaries without ready access to trust assets. In an effort to minimize this problem, the modified bills allow any expatriate required to provide security with respect to a trust interest to require that a U.S. trustee of such trust provide the required security.[274]

d. Valuation

Valuation typically is based under present law on the price that a "willing buyer" would pay to a "willing seller". Difficult valuation issues will arise with respect to the various interests that must be marked to market under the three versions of the expatriation proposal. For example, with respect to the typical interests in a trust (e.g., an income or remainder interest), the value is often dependent upon facts generally not known or knowable (e.g., the health of the income beneficiary) by purchasers. Discretionary trust interests are particularly difficult to value since it is hard to predict how the holder of the discretionary power will ultimately exercise that power, especially when the interest is deemed to be held by "a willing buyer" instead of the beneficiary designated by the trust's grantor.

The valuation issues with respect to trusts will differ between the Administration proposal and the Senate and modified bills. The Administration proposal would require that the interest in the trust be valued. In contrast, the Senate bill and the modified bills would require that the trust assets underlying the trust interest be valued. For various reasons, the value of a trust interest can differ from the value of the assets underlying the trust interest.[275] As a result, the Administration proposal may have different tax consequences than the Senate bill and the modified bills.

2. Application of marking to market to interests in trusts

a. Administration proposal

In the Administration proposal, an interest in a trust would be treated as if the expatriating beneficiary had sold his interest in

[274] It is not clear whether this requirement would be binding on a trustee, if it conflicts with applicable State or foreign law or if it is not authorized under the terms of the trust. Also, this provision apparently requires a trustee to use trust property as security for beneficiaries who may have no interest in (or otherwise never receive) such property. Thus, this provision may unfairly deprive other beneficiaries of their interests in such trust property.

[275] For example, a restriction on transfer of the trust interest may affect the value of the trust interest, but generally will not affect the value of the trust's underlying assets.

the trust for its fair market value. The amount of the resulting gain or loss would be the difference between that fair market value and the beneficiary's basis in the interest. Presumably, the fair market value would be what a willing buyer would pay for such interest. The beneficiary's basis typically would be determined under the uniform basis rules (see above). If the interest that is being marked to market is an income interest, term interest or life estate, section 1001(e) would prevent the use of any of that basis in determining the gain realized on the deemed sale. Any resulting tax liability would be that of the expatriating beneficiary; the trust itself would not pay the tax.

The deemed realization by the expatriating beneficiary generally would result in double taxation of the gain inherent in trust assets—once on the gain resulting from the deemed sale of the trust interest and again when the trust actually disposes of the trust assets.[276] This is because the deemed realization by the beneficiary with respect to his trust interest does not result in a basis adjustment to the trust's "inside" basis in its assets.[277] To eliminate this double taxation, the proposal could be amended to permit a basis adjustment upon a deemed realization (i.e., the trust would be permitted to increase its basis in the trust assets by the amount of gain recognized by the expatriating beneficiary). Such an adjustment, if permitted, would cause less taxable gain (or more taxable loss) when the trust subsequently sells trust assets. The individual who would benefit (in the case of an increase in basis from a gain) or negatively affected (in the case of a decrease in basis from a loss) would depend upon the allocation of the gain under the terms of the trust instrument.[278] In the typical case, undistributed gains from a sale are taxed to the trust, and the tax typically is allocated to the residual interest in the trust. As a result, any increased basis from the deemed sale by the expatriating beneficiary would reduce the tax borne by the residuary beneficiary or beneficiaries of the trust. The effect of these rules may be illustrated by the following examples:

Example 1 (one income beneficiary who expatriates and one remainderman).—Assume that F created a trust into which he transferred stock of M Corporation with a basis of $1,000[279] that is to pay the income from the trust for a 20-year period to S, remainder to GS. Also assume that S expatriates five years later, when the discount rate is 10 percent, the value of the M stock is $2,000, and that the M Corporation is expected to pay dividends of $100 a year.

Under the Administration proposal, S would be deemed to have sold his interest in the trust for its market value when S expatriates. Assume that the value of S's interest at that time is $500 (which is less than the present value of the income stream of

[276] This domestic double tax is in addition to any potential double tax that may arise on trust distributions as a result of the expatriate moving to another country. (For a discussion of these issues, see Part V.F.)

[277] Put another way, the double tax arises because the beneficiary's basis in the trust (the "outside" basis) is not coordinated with the trust's basis in its assets (the "inside" basis).

[278] Any adjustment to the trust's basis for Federal income tax purposes also may not extend to the determination of the amount of gain or loss under applicable local law in determining beneficiaries' interests in the trust.

[279] The basis could be either what F paid for the stock in the case of an intervivos trust or the value of the stock in the case of a testamentary trust.

$760.61 because of the difficulty in selling an interest in a trust). Under the uniform basis rules, S's basis in the income interest would be $380.31 ($1,000 × $760.61 ÷ $2,000). Nonetheless, under section 1001(e), S cannot use that basis in determining the gain on the deemed sale of the income interest. As a result, S would recognize a gain of $500. The tax on this gain may be viewed as an acceleration of the taxes on income for which S would have been liable had he not expatriated; the subsequent distributions to S of the actual income of the trust also may be subject to withholding taxes and hence double taxed, but otherwise will be exempt from U.S. taxation, because S will be a nonresident alien at that time.

Next assume that the trust subsequently sells the stock in M Corporation for $2,000. Because the deemed sale by S does not affect the trust's basis in its assets, the resulting gain on the sale will be $1,000 (amount realized of $2,000 minus basis of $1,000) the tax on which will be borne entirely by GS.[280] Even though the tax on an expatriating income beneficiary and the tax on the trust on the disposition of trust assets are determined both by reference to the amount of gain in the trust's corpus, it is not clear that there is double taxation of that gain. Since the tax that arises by reason of expatriation will be borne entirely by a beneficiary who is entitled only to income, the tax may be viewed as acceleration of tax that the income beneficiary would have paid on the trust income had he not expatriated. This result arguably is consistent with the second purpose articulated by the Administration for the proposal.[281] The tax on the actual disposition of M Corporation stock that will be borne by the remainderman would be the same as occurs under present law.

If the proposal is amended to allow the gain on the deemed sale to result in an upward adjustment of the trust's basis in the trust assets to $1,119.69 ($619.69 basis in the remainder interest plus the $500 realized on the deemed sale of the income interest), there will be gain only on $880.31 on the subsequent disposition of the trust assets for $2,000. Thus, adopting such an amendment would transfer the tax on a portion of the gain from the remainderman to the income beneficiary (i.e., the proposal would exempt some of the tax normally borne by the remainderman).[282]

Example 2 (one income beneficiary and one remainderman who expatriates).—Assume the same facts as Example 1, except that it is GS, not S, who expatriates 5 years after the trust was created and that the value of the remainder interest is $1,100 (which is less than present value of the remainder interest of

[280] If the resulting gain is not distributable to GS at that time, the trust will pay tax on the $1,000 gain and allocate the tax to GS's residuary interest in the trust. If the resulting gain is distributable at the time of the sale, the resulting gain will be included in the distributable net income (DNI) of the trust which DNI will be distributed to, and therefore taxable to, GS.

[281] If this is the purpose of the proposal, however, other future income streams (e.g., interest on bonds or dividends on stock) also should be subject to tax. As discussed above, these income streams are not expressly subject to tax under the proposal (but may be subject to tax under regulatory authority granted to the Treasury Secretary); thus, the proposal may be inconsistent in its treatment of income interests held in trust and other future income streams. Taxing future income streams, including income interests held in trust, arguably would be inconsistent with the first purpose articulated by the Administration for the proposal.

[282] In some jurisdictions, S may have an action to collect the amount of the tax from GS under the doctrine of equitable recoupment. In addition, the proposal could be modified to provide a Federal right of contribution, similar to the rights provided under sections 2207 and 2207A.

$1,239.39 ($2,000 − $760.61) because of the difficulty in selling an interest in a trust).

Under the Administration proposal, GS would be deemed to have sold his interest in the trust for its market value when GS expatriates. Under the uniform basis rules, GS's basis would be $619.69 ($1,000 × $1,239.39 ÷ $2,000). As a result, GS would recognize a gain of $480.30 ($1,100 − $619.70).[283]

As indicated above, present law does not permit a basis adjustment to the trust's basis in its assets upon the deemed sale of a trust interest. Without such an adjustment, there may be a double tax borne by the remainderman—a tax borne directly by him on the deemed sale under the proposal and then an additional tax that typically is imposed at the trust level when the trust sells the property.[284] However, unlike Example 1, both taxes will be borne in this case by the same individual—the remainderman.

If the proposal were amended to allow a basis adjustment for the gain on the deemed sale, the trust's basis in the trust assets after the deemed sale would be $1,480.31 ($380.31 basis in the income interest plus the $1,100 realized on the deemed sale of the income interest). As a result, there would be gain of only $519.70 on the subsequent disposition of the trust assets for $2,000. The total gain recognized would still be $1,000 ($480.30 plus $519.70); the net effect of the Administration proposal with a basis adjustment would be to accelerate part of the gain to the time of expatriation.

If, instead of selling the stock in M Corporation, the trust makes an in-kind distribution to the expatriate, there will be no additional tax. On the other hand, if the trust makes an in-kind distribution of the M Corporation stock to a foreign corporation, partnership, or trust, an additional 35-percent excise tax generally would be imposed under section 1491.

b. Senate bill and modified bills

Under the Senate bill and the modified bills, the following transactions would be deemed to occur when a trust beneficiary expatriates: (1) the interest shall be separated into a separate share within the trust; (2) the separate trust then is treated as selling the newly segregated assets; (3) the separate trust distributes the sales proceeds from the deemed sale to the expatriated beneficiary; and (4) the expatriated beneficiary contributes the deemed distributed assets back to the trust with a stepped-up basis.[285] Thus, one effect

[283] Note that section 1001(e) does not apply to the sale of a remainder interest.

[284] If the trust requires that the proceeds be distributed to GS in the year of sale, the gain on the sale would be included in the distributable net income (DNI) of the trust and, therefore, generally would be taxable to GS instead of the trust. However, because GS will be a nonresident alien at that time, he or she would avoid the double tax on the distribution of proceeds in this case. This is because withholding tax is only imposed on distributions from trusts with U.S. trustees to foreign beneficiaries generally to the extent that the trust distribution comprises income that would be subject to U.S. withholding tax if paid directly from the U.S. payor to the foreign beneficiary (e.g., trust distributions of U.S.-source dividends, rents, royalties, and certain interest), but withholding does not apply to trust distributions of U.S.-source capital gains, foreign-source income of any type, or corpus (sec. 1441).

[285] It is unclear under the proposal whether the deemed recontribution causes the trust to be treated as a grantor trust with respect to the recontributed assets. The question of whether the deemed recontribution gives rise to a grantor trust should be clarified. Treatment as a grantor trust may have the apparently unintended consequence of treating the separate trust as a foreign grantor trust. (See Part V.H.2.c., below.)

The recontribution treatment may have other unintended consequences (e.g., the effect on other beneficiaries with respect to trust distributions, the application of the generation-skipping of this treatment is to provide effectively for the basis adjustment not permitted under the treatment of the Administration proposal. Moreover, as discussed with respect to valuation above, a second effect of this treatment is to impose the tax on the value of the trust's underlying assets, as opposed to the Administration proposal's approach of valuing the trust interest. Thus, any potential discount that arises from a deemed sale of an interest in a trust would be eliminated. These rules may be illustrated by the following examples.

Example 3.—The facts are the same as Example 1. Under the Senate bill and the modified bills, a separate trust[286] is deemed created out of the original trust's assets in an amount equal to the value of S's income interest in the original trust.[287] Presumably, after the deemed segregation, the separate trust would have assets with a value of $760.61 and a basis of $380.31. That trust would be deemed to sell those assets and to distribute the sales proceeds to S. As a result, the separate trust would recognize a gain of $380.30[288] which gain would be included in the separate trust's distributable net income (DNI) that is distributed and, therefore, taxable to S prior to his expatriation.[289] Finally, S would be deemed to have contributed the $760.61 of distributed sales proceeds to the original trust.

The proposal is somewhat unclear as to the proper method of determining what the tax effect of a subsequent sale by the trust. Assume the trust sells the M Corporation stock for $2,000. Presumably, under these bills, the basis of the assets would be at least the $619.69 ($1,000 less $380.31) left in the remainder interest in the original trust. It is unclear, however, whether the original trust would have any additional basis in the deemed contribution by S since it is unclear whether that deemed contribution created a grantor trust in which S is treated as its owner. If the trust received no basis in the deemed contribution because the deemed

transfer tax, and cases where the expatriate had interests in a charitable remainder trust or a pooled income fund).

286 The deemed transaction under the bills is somewhat unclear since the bills state that the beneficiary's interest is "...treated as a separate share in the trust and ... such separate share shall be treated as a separate trust consisting of the assets allocable to such share...." Separate shares within a trust are not the same as a separate trust. In general, the effect of the special rules for separate shares (sec. 663(c)) is to prevent income allocable to the separate share from affecting the taxability of distributions to other beneficiaries of the trust through allocating distributable net income of the separate share to other beneficiaries.

287 While both the language of the Senate bill and the modified bills, as well as any legislative history (see page 24 of S. Rept. 104-16, 104th Cong. 1st Sess., on the Senate amendment to H.R. 831) are, at best, ambiguous on what occurs upon the deemed creation of the new trust, the staff has been given to understand that the intent of the provision is that a portion of the trust's assets would be deemed transferred from the original trust to a new trust. If, instead of individual assets being deemed transferred to a new trust, a life estate was deemed transferred to a new trust, the tax results would be similar except that section 1001(e) would apply so that the gain on the deemed sale by the new trust would be determined without regard to any basis the new trust would have in the life estate.

288 Since the separate trust is deemed to have sold trust assets and not an income interest, section 1001(e) would not apply.

289 As discussed above, beneficiaries of trusts generally are taxable on distributions from a trust to the extent of the trust's DNI for taxable years ending with, or within, the taxable year of the beneficiary. However, present law is unclear as to whether income from a complex trust is includible in a beneficiary's income under the "with or within rule" as the distributions from the trust are made or at the beneficiary's year end. If income is includible only at the beneficiary's year end, the United States will have lost jurisdiction to impose a tax in the case of expatriation since the deemed second trust under the various bills would be a complex trust and the beneficiary typically would be a nonresident alien at the close of his taxable year (except in the unusual event that the expatriation occurs on the last day of the beneficiary's taxable year).

contribution created a grantor trust, there would be a gain of $619.70 on the sale of the M Corporation stock (amount realized of $1,239.39 ($2,000 less $760.61) less basis of $619.69. As a result, there would be total taxable gain of $1,000 (gain of $380.31 on the deemed sale on expatriation plus additional gain of $619.70 on the actual sale by the original trust). If, on the other hand, the deemed contribution did not create a separate grantor trust and the original trust thus did receive additional basis in its assets by reason of the deemed contribution by S of $761.61 (i.e., the amount realized on the deemed sale of the assets of the deemed separate trust), the trust's total basis in its assets would be $1,380.31 ($619.69 of basis in the remainder interest plus $761.62 in the deemed contribution) and the resulting gain to the original trust on an sale of its assets would be $619.69 ($2,000 less $1,380.31) for total gain of $1,000 ($380.31 plus $619.69).

Example 4.—The facts are the same as Example 2. Under the Senate bill and the modified bills, a separate trust is created for GS's remainder interest in the M Corporation stock. Thus, the separate trust has assets with a basis of $620.69 and a value of $1,241.38. The separate trust then is deemed to have sold that interest for $1,241.38 with a resulting gain of $620.69. The separate trust would be deemed to distribute all of its assets ($1,241.38) to the expatriating beneficiary which would result in gain of $620.69 being included in the separate trust's distributable net income that is distributed and therefore, taxable to the expatriating beneficiary.

While the proposal is unclear what the tax results would occur on the deemed distribution and recontibution upon expatriation under these bills if the trust subsequently were to sell the M Corporation stock for $2,000, presumably the basis of the assets in the original trust would be $1,621.69 (i.e., $380.31 in the income interest plus $1,241.38 in the deemed contribution by GS). If the trust were subsequently to sell that asset for $2,000, there would be a gain of $378.31 ($2,000 less $1,621.69). As a result, there would be total taxable gain of $1,000.00 ($479.31 + $519.69).

c. Technical issues

Closest in kinship rules; Intestate succession rules

If the ownership of trust interests cannot be determined under the facts and circumstances test, the Administration proposal and the Senate bill apply "closest in kinship" rules and the modified bills rely on intestate succession rules to determine trust ownership. In either case, these rules could permit tax planning to avoid or reduce imposition of the expatriation tax and could also have arbitrary results. For example, assume a grandfather wants to establish a discretionary trust for a granddaughter who plans to expatriate in the future. To avoid the expatriation tax, he may include his daughter (i.e., the granddaughter's mother) as a potential beneficiary in the hopes that the facts and circumstances test will not apply and the interest in the trust will therefore be attributed completely to the daughter under the closest in kinship rules or intestate succession rules. Similarly, even if the daughter is truly an intended beneficiary, attributing the entire trust to her under either the closest in kinship rules or the intestate succession rules seems improper given the grandfather's intent to benefit both his daughter and his granddaughter.

Stepped-up basis for immigrants **(Modified bills only)**

Under the modified bills, an immigrant can elect to receive a stepped-up basis in assets at the time he becomes a U.S. citizen or resident. If the immigrant is a beneficiary of a trust, the stepped-up basis applies to the beneficiary's outside basis in the trust, not the trust's basis in the underlying assets. Under the modified bills, there is a deemed severance of the expatriate's share of the original trust's assets into a separate second trust, which assets then are deemed sold and distributed, as a liquidating distribution, from that second trust to the expatriate. Thus, the basis that is relevant for purposes of determining gain is the trust's inside basis, rather than the beneficiary's outside basis. As a result, an expatriate who has held an interest in a trust since the time of his or her immigration to the United States would receive no benefit from the stepped-up basis election with respect to his or her interest in a trust.[290]

Grantor trusts

Under present law, the grantor of a grantor trust is treated as the owner of the trust assets for tax purposes. The expatiation proposals retain this present law rule. Thus, for purposes of the various expatriation proposals, only the grantor of a grantor trust is treated as having an interest in the trust. By ignoring a beneficiary's interest in a grantor trust, the various expatriation proposals do not address a perceived problem with present law raised by the Administration. The Administration believes that the present-law grantor trust rules allow a U.S. beneficiary of a foreign trust with a foreign grantor to avoid U.S. tax. According to the Administration, this should be prevented, especially where the income of the trust may not be taxed by any jurisdiction. To eliminate this problem, the Administration submitted a separate proposal (at the same time as it submitted its expatriation proposal) to apply the grantor trust provisions only if a U.S. person is the grantor.[291] This proposal has not yet been considered by Congress. If this part of the Administration's proposal also were adopted, the expatriation proposals would apply to a U.S. beneficiary of a foreign trust with a foreign grantor. However, if this proposal is not adopted, the problem with present law perceived by the Administration also would exist with respect to the expatriation proposals—a U.S. beneficiary of a foreign grantor trust would avoid the imposition of the expatriation tax on his interest in the trust.

3. Analysis of the application to trusts of mark-to-market under the expatriation proposals

In general.—All of the expatriation tax proposals are premised upon a concern that the income tax base will be depleted through individuals expatriating. To address concerns regarding liquidity, the proposals each offer an expatriate some ability to defer pay-

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[290] Similar basis adjustment issues may arise with respect to other passthrough entities, such as partnerships.

[291] See H.R. 981 and S. 453, "Tax Compliance Act of 1995", 104th Cong., 1st Sess., sec. 294.

ment of the tax on expatriation. The ability to defer generally would be dependent upon the trust beneficiary providing adequate security to the IRS for payment of the tax. As discussed above, providing such security could be expensive and also very difficult, particularly for remaindermen and discretionary beneficiaries without ready access to trust assets. In light of these problems, the question arises as to whether marking to market a beneficiary's interest in the trust (in the case of the Administration proposal) or the separate trust's assets (in the case of the Senate bill and the modified bills) is necessary to ensure that the tax base will not be depleted. In considering this question, it is necessary to distinguish between domestic and foreign trusts.

Domestic trusts.—In the case of expatriation of a beneficiary of a domestic trust, the Federal Government retains *in rem* jurisdiction over the trusts assets, even though it loses *in personam* jurisdiction over the beneficiary. As a result, it may be unnecessary to impose taxation at the time of expatriation on an expatriating beneficiary's interest in a trust.

Because the U.S. retains *in rem* jurisdiction over the assets of a domestic trust, modifying the taxation of trusts to prevent depletion of the U.S. tax base appears only to be necessary where present law rules would result in gain that accrued prior to expatriation being taxable to the expatriate, rather than at the trust level. Under present law rules, this would occur only (1) where such gains are distributable to the expatriate in the year they are realized (and, therefore, are includible in the DNI of the trust) or (2) where there is an in-kind distribution to an expatriate. Unless there is a substitution of other assets for trust assets (e.g., a bond or pledge of other assets), imposition of a tax in such cases appears necessary since the tax liability falls on the expatriate, but the U.S. does not have *in personam* jurisdiction over the expatriate in order to imposing the tax on him or her, and the U.S. loses *in rem* jurisdiction over the distributed assets (to which the taxable gain is attributable).

In the first case, it is possible to impose a tax by either disallowing a distribution deduction to the trust for distribution of such gains to expatriates or imposing a withholding tax on distributions of such gains to expatriates. The latter approach is probably less complex since the former approach requires modification of the present law rules to assure the tax does not affect the taxation of distributions to other beneficiaries. Both of these alternative solutions would eliminate the identification of ownership, liquidity and valuation problems that are present with the proposed general application of a mark-to-market rule.

In the second case, a tax can be imposed by (1) treating the in-kind distribution to an expatriate as a realization event and disallowing a distribution deduction to the trust for distributions of the realized gain to the expatriate, or (2) imposing a withholding tax at the time of the in-kind distribution to an expatriate. Neither of these alternatives would raise identification of ownership problems. Both of these alternatives, however, would still pose valuation problems and may still pose liquidity problems (e.g., the trust holds only illiquid assets that it must sell to pay the tax). These problems seemingly cannot be avoided in the case of in-kind distributions if the concerns regarding depletion of the tax base are to be addressed.

Foreign trusts.—If the beneficiary of a foreign trust expatriates the Federal Government has already lost (or never had) *in rem* jurisdiction over the trust assets (other than U.S. source assets) and will lose *in personam* jurisdiction over the beneficiary upon expatriation. As a result, any tax necessary to address concerns over depletion of the U.S. tax base must be imposed no later than the time that expatriation occurs.

Migrating trusts.—Trusts which were originally domestic trusts that change their status to foreign trusts pose similar problems to foreign trusts since the U.S. loses *in rem* jurisdiction over trust assets (other than U.S. source assets) at the time that the trust migrates. If none of the beneficiaries had expatriated before the change in situs of the trust, the same rules that apply to a trust which was always a foreign trust could be applied to a change in trust situs. On the other hand, if a beneficiary of such a trust had expatriated before the change in trust situs, a tax needs to be assessed at the time of the change in situs since the U.S. would have neither *in rem* or *in personam* jurisdiction after the change in trust situs.[292]

[292] The U.S. already imposes an excise tax on the transfer of an appreciated asset to a foreign trust (sec. 1491). It is unclear under present law whether this tax applies to the migration of a U.S. trust to a foreign situs. Thus, it may be possible to rely on section 1491 or modify it with respect to expatriation to prevent erosion of the U.S. tax base. Present law section 1491, and any possible modification deemed necessary for purposes of the expatriation tax, would pose valuation and liquidity problems, but those are problems that cannot be avoided. Care should be taken to coordinate the application of section 1491 with any expatriation tax imposed with respect to interests in foreign or migrating trusts.

I. Other Possible Problems Associated With Existing Law, Including Estate and Gift Tax Provisions

Claims have been made that the reason why wealthy Americans are deciding to leave the United States and give up their U.S. citizenship is that the tax burden imposed on U.S. citizens is too high. This argument has several dimensions. First is the contention that the United States should not impose an income tax based solely on U.S. citizenship, since the United States is the only major country that imposes its income tax based on citizenship rather than residency.[293] Second is the claim that the combined burden of U.S. income, estate, and generation-skipping taxes is higher than the taxes imposed in other countries. The U.S. income tax can be as high as 39.6 percent,[294] and the estate (or gift) tax and the generation-skipping transfer ("GST") tax can each be as high as 55 percent. Thus, a U.S. citizen in the highest tax brackets who wants to pass his earnings on to his grandchildren could face an effective Federal tax rate of close to 88 percent.[295] A survey of the estate, gift and inheritance taxes of other countries is included in Appendix C. However, it is difficult to directly compare the level of tax imposed in those countries with the level of tax in the United States because the structure of the taxes is often quite different. For example, the base of the tax may vary significantly with respect to different countries. The U.S. tax structure allows an unlimited marital deduction for transfers to spouses at death, a $600,000 lifetime exemption for transferred property that would be subject to estate and gift taxes, and a $10,000 annual exclusion for gifts. In addition, the highest marginal rate in the United States applies only to cumulative taxable transfers in excess of $3 million, whereas the top rates in most other countries generally apply at significantly lower levels. Thus, even though the stated marginal rates of tax in the United States may be higher than the marginal rate of tax imposed in certain other countries, it is unclear whether the *average* rate of tax imposed in the United States is indeed higher than that imposed in other countries.

Another difficulty raised by the proposals to enact a new tax on expatriation is that certain assets may be subject to both the new expatriation tax and the existing estate and gift taxes. The proposed taxes would be imposed on most the assets held by an expatriating individual, whether those assets are U.S. assets or foreign assets. To the extent that they are U.S. assets, however, an estate tax would also be imposed on those assets if they are still held by the expatriate at the time of death. The proposals do not allow a step-up in basis from the deemed sale on expatriation, nor is any provision made whereby the estate tax would be eliminated if the individual dies shortly after expatriating. Thus, such assets could be subjected to both the maximum capital gains rate of 28 percent (at the time of expatriation), plus the maximum estate tax rate of

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[293] The only other countries that tax non-resident citizens are the Philippines and Eritrea, and even in those countries, the taxes imposed on non-resident citizens are lower than those imposed on resident citizens.

[294] Where earned income is involved, the top rates (including the Medicare tax) can be as high as 41.1 percent in the case of an employee and 42.6 percent in the case of a self-employed person.

[295] State and local income taxes may also apply.

55 percent (at the time of death), thus resulting in an effective rate of tax of approximately 68 percent.[296] If the assets were transferred to the expatriate's grandchildren, the GST tax of 55 percent would also apply, resulting in an effective tax rate of 85 percent.

[296] For example, if an expatriate has $100 in unrealized gain with respect to a U.S. asset, and he dies the day after he expatriates, he would have an expatriation tax liability of $28, which would reduce his net estate by $28. His estate would pay a 55-percent tax on $72, resulting in an estate tax liability of $39.60, and leaving the estate with $32.40.

VI. POSSIBLE ALTERNATIVES TO THE EXISTING EXPATRIATION PROPOSALS

During the course of the study, the Joint Committee staff met or otherwise consulted with numerous practitioners who have advised or are advising taxpayers on the U.S. tax ramifications of expatriation.[297] Other practitioners also submitted written comments and testimony on the proposals described in Part III., above (i.e., the Administration proposal, the Senate amendment to H.R. 831, and S. 700 and H.R. 1535). The majority of the oral and written comments contain recommendations to modify the proposals. The discussion below describes alternatives to the proposals. These alternatives can be categorized as follows: (1) possible modifications to present-law section 877 (in lieu of enacting proposed section 877A); (2) possible modifications to the proposals; or (3) general recommendations to modify the rules with respect to the taxation of expatriation (e.g., tighten present-law section 367 and enhance coordination between the State Department and the IRS).

A. Possible Modifications to Present-Law Section 877

1. Apply section 877 without regard to intent

The simplest alternative to the proposals would be to apply present-law section 877 (and its estate and gift tax counterparts, secs. 2107 and 2501(a)(3)) without regard to the motive of the U.S. citizen who expatriates. Thus, section 877 would apply, for 10 years after the loss of citizenship (the "testing period"), to all individuals who relinquish their U.S. citizenship unless a specific exception applies. Exceptions could be provided to taxpayers in the cases described below:

(1) Individuals with dual nationalities;
(2) Long-term nonresident citizens of the United States (e.g., someone who has lived abroad for more than 10 years, or someone who has lived in the United States for fewer than 5 years);
(3) An individual who renounces his or her citizenship within a certain period of time (e.g., 6 months) after reaching the age of majority;[298] and
(4) Other categories of individuals (as defined by regulations).

In addition, the rules could also provide that an objective standard may apply to deem an individual not to have expatriated for tax avoidance purposes. For example, an individual could be deemed not to have expatriated for tax avoidance purposes if the expatriate is subject to foreign income tax at an effective rate that

[297] See Appendix F for a discussion of the methodology of the Joint Committee staff in conducting the study.

[298] There are numerous ways in which the class of individuals eligible for this exception could be defined. For example, S. 700 and H.R. 1535 would not apply the proposed tax on expatriation to an individual who relinquishes U.S. citizenship before attaining the age of 18-1/2, if the individual lived in the United States for less that 5 taxable years before the date of relinquishment. Alternatively, this exception could apply to individuals who were born in the United States with dual nationalities, to individuals who were born outside the United States but acquired U.S. citizenship by reason of having a parent who is a U.S. citizen, and to individuals who have a right to a second nationality at birth. As under S. 700 and H.R. 1535, any of these exceptions could also be limited to individuals who have not lived in the United States for a significant period of time.

is comparable to the U.S. income tax rate (e.g., 90 percent of the maximum U.S. rate using the analog of sec. 954(b)(4)) during the testing period. One problem with this approach is that it may be difficult for the IRS to determine that the individual is paying a sufficient amount of foreign country tax on the same income that would be subject to U.S. tax. However, the IRS could periodically publish a list of "high effective tax rate" countries. Then, an expatriate could be required merely to demonstrate that he or she resided in a high effective tax rate country (and was subject to tax under the laws of that country) for the exception to apply.

In effect, this alternative would presume that individuals meeting the criteria of one of the specific categories would not be expatriating for tax avoidance purposes. There are several advantages to this alternative. First, individuals who generally are not relinquishing their U.S. citizenship for tax avoidance motives would not be affected. Second, double taxation could be avoided with respect to the enumerated categories of individuals (who would be presumed to be leaving for nontax reasons). Under this approach, the many complexities associated with the treatment of trust beneficiaries would be substantially avoided because such individuals would be taxable on only their trust income distributions for the 10-year period. The disadvantage of this approach is that an individual might be eligible for one of the exceptions, yet still be expatriating to avoid U.S. taxes.

2. Expand sections 877, 2107, and 2501(a)(3) to tax certain expatriates who leave and maintain a presence in the United States

Under this alternative, section 877 (and its gift and estate tax counterparts) would be modified to subject to tax certain former citizens who expatriated during the testing period but who maintain "significant ties" to the United States. Former citizens who are present in the United States for more than a de minimis length of time (e.g., 15 days or more each year) during the testing period will be deemed to have maintained significant ties to the United States.

However, a former citizen would not be subject to section 877 (instead, the individual would be taxed as a nonresident alien) if he or she is present in the United States for less than the de minimis length of time during the testing period and enters into a closing agreement. A former citizen who does not enter into such a closing agreement would be subject to worldwide U.S. taxation for the entire testing period unless the individual establishes that the expatriation did not have tax avoidance as one of its principal purposes.

Under the closing agreement, the former citizen must agree to the following conditions:

(1) he or she must agree to report to the IRS all dates of physical presence in the United States,
(2) he or she must agree to be taxed as a U.S. citizen for the entire testing period if he or she is present in the United States for greater than the de minimis period in any year during the testing period, and
(3) he or she must agree to waive all treaty benefits based on residence in a foreign country.

This alternative would satisfy the objective of taxing individuals who have not really severed their ties with the United States. The advantages of this alternative are similar to the advantages of alternative A.1., above. Thus, individuals who are not relinquishing their U.S. citizenship for tax avoidance motives would not be affected and the problem of potential double taxation could be avoided.

B. Suggestions to Modify the Administration Proposal, the Senate Amendment to H.R. 831, and S. 700 and H.R. 1535

1. Conform the citizenship loss date with the Immigration and Nationality Act

Some have suggested that the expatriation tax proposal should use the same definition of citizen for tax purposes as the definition used by the State Department under the Immigration and Nationality Act ("INA"). Under present law, an individual loses U.S. citizenship for all purposes at the time an "expatriating act" is committed. As discussed in Part IV.B., the proposals would change, for tax purposes only, the date of loss of citizenship. Use of the same definition of loss of citizenship for all purposes would eliminate the potential for confusion and litigation resulting from the conflict in U.S. internal laws regarding the definition of the termination of citizenship. Such a rule would also avoid retroactive application of the proposals. The disadvantage of the conformity is that if someone lost his citizenship but did not report to the State Department until years later, and did not find out about the expatriation tax until the loss was reported, it may be difficult to establish the amount of the tax base years later. However, the problems associated with such persons may not be substantially different than the problems the IRS confronts with the non-filer population, but with a much smaller group of taxpayers involved.

2. Narrow the scope of the proposals

Some have suggested that the proposals should exclude green-card holders to avoid the various problems which would be created for multinational entities moving professionals in and out of the United States and to avoid the incentive for such persons to forego permanent resident status in favor of an "E" visa which would actually reduce their current U.S. tax liability.

If green-card holders are subject to the proposals, then transitional relief could be provided to those green-card holders who have been taxed as U.S. residents for 8 years (or 10 years, under the Administration proposal) before February 6, 1995. This group of people would have no recourse to avoid the expatriation tax if they decide to leave the United States and would have little notice that they would be subject to the tax upon departure. A transition rule could be provided whereby such individuals would be subject to the tax if at least 2 of the 8 (or 10) years were after February 6, 1995. Commentators have also recommended that dual nationality individuals who have been resident in the United States for shorter than a certain period (e.g., 5 or 10 years) prior to February 6, 1995 should be exempt.

3. Adopt an income tax approach

Some have suggested that the proposed departure tax reflects a hybrid of income, gift and estate tax principles, resulting in an overly-broad tax regime. Because the departure tax is essentially a tax on capital gains (albeit unrealized), the tax base could include only those items that would be taxable to a U.S. citizen if gain were recognized on their sale. For example, the holder of an income interest in a trust would never be taxed on any appreciation in the trust assets under general U.S. tax principles.[299] Thus, under an income tax model, an income beneficiary of a trust would not be liable for an expatriation tax on any appreciation in the value of the trust assets. Under this approach, properties held through a grantor trust (which are generally taxable to the grantor) would be included in the mark-to-market regime. Other trust interests would be exempt.

4. Exclude assets that produce foreign source income

Some have suggested that the departure tax should apply only to assets that produce U.S. source income, or assets that are effectively connected with a U.S. trade or business because it may be unfair for the United States to impose a tax on assets that generate foreign source income, such as real estate located abroad or foreign business assets that are not part of a U.S. trade or business. Such exemptions are particularly relevant to U.S. citizens who have resided overseas for an extended period prior to the relinquishment of U.S. citizenship and who own assets having little or no connection to the United States. Such an exclusion would be consistent with the example that the Treasury Department used to describe the target of its proposal: "Mr. Greenback", a U.S. citizen who built his fortune in the United States, and who relinquishes his citizenship to avoid U.S. taxes.[300] The exclusion would not apply to individuals like Mr. Greenback who built their fortunes in the United States. The exclusion would not be completely consistent with the existing U.S. tax policy of imposing worldwide income taxation on the basis of U.S. citizenship or residence; however, this proposal would not alter the rules of present law under which such an individual would generally have been subject to tax on his or her worldwide income prior to expatriation, including that derived from property and business located outside the United States.

5. Modify treatment of trust interests

The proposals would tax either appreciation in an interest in a trust or a portion of appreciation in the underlying assets of the trust upon the expatriation of a beneficiary of the trust. The same treatment would apply to someone who is an income beneficiary, a remainderman or a holder of a contingent or discretionary interest. Many of these beneficiaries do not have determinable interests in the trust, or access to the assets held by the trusts, and may not have other resources to pay the tax, creating a liquidity problem. To the extent that individuals are taxed on contingent or discre-

[299] It should be noted that this conclusion relates to both U.S. income tax and estate tax generally.

[300] Department of the Treasury, Treasury News, "Clinton Offers Plan to Curb Offshore Tax Avoidance," RR-54, February 6, 1995.

tionary interests, they may be taxed on an amount they will never receive.

One suggested alternative would be to narrow the scope of the tax base from the modified bills (S. 700 and H.R. 1535) by excluding domestic trust interests from the deemed sale treatment upon the expatriation of a trust beneficiary. As discussed in Part V.H.2.c., above, the general policy under U.S. tax principles has been to levy tax at the trust level for income or gains generated by the assets of a domestic trust. In these cases, the United States retains the *in rem* jurisdiction and it is unnecessary to impose a mark-to-market regime upon the expatriation of a beneficiary of the trust. Instead, the trust would continue to be subject to tax on the income derived from its assets.[301]

Special rules may be needed to modify the taxation of the trusts to prevent erosion of the U.S. tax base where present law would result in gain that accrued prior to expatriations being taxable to the expatriate, rather than at the trust level. These rules would entail (1) imposing a tax by either disallowing a distribution deduction to the trust for distribution of certain gains to expatriates or imposing a withholding tax on distributions of such gains to expatriate beneficiaries, and (2) imposing a tax by either treating the in-kind distribution to an expatriate as a realization event and disallowing a distribution deduction for distributions of the realized gain to the expatriate, or imposing a withholding tax at the time of the in-kind distribution to an expatriate.

The United States does not have *in rem* jurisdiction over a foreign trust. Consequently, the departure tax could be imposed at the point a beneficiary of such a trust relinquishes U.S. citizenship or residence.

C. Modifications to Strengthen Either Present Law or the Proposals

1. Expand the application of sections 367 and 1491 to former citizens

a. Outbound transfers

If present law section 877 is retained in its current form or is modified to eliminate the purpose test but still retain the 10-year taint on U.S. source income, sections 367 and 1491 should be conformed to the section 877 provision so that restructurings that avoid those provisions in connection with expatriation are no longer possible. Thus, a former U.S. citizen who contributes appreciated property to a foreign corporation, a foreign partnership or a foreign trust within 10 years of the loss of his or her citizenship under section 877 would be subject to sections 367 and 1491. The gain could be deferred in appropriate cases if the taxpayer enters into a gain recognition agreement to ensure compliance with the rules regarding transfers of appreciated assets. The expatriate would be required to file Form 1040NR for the entire 10-year period even if a U.S. income tax return is not otherwise required. These changes would be intended to prevent expatriates subject to section 877

[301] The proposed expatriation tax could be applied to domestic trusts that migrate (i.e., the trust's residence is changed from the United States to a foreign jurisdiction) to trigger a tax on the gain accrued prior to the change.

from restructuring their asset ownership to covert what would otherwise be U.S. source income subject to tax under section 877 into non-U.S. source income not subject to tax under section 877.

b. Foreign to foreign transfers

After expatriation, the subpart F rules with respect to foreign income would no longer apply to tax that person as a United States shareholder. Section 367 would be amended to provide that for 10 years following an expatriation subject to section 877, any remittance or other event that would have produced U.S. taxable income will be subject to tax under section 367 with respect to earnings and profits earned or accumulated prior to the expatriation. To enhance the effectiveness of such a provision, ordering rules could treat any earnings and profits that would be taxable under this provision during the 10-year period as coming first from amounts accumulated prior to the expatriation.

2. Enhance coordination between the State Department and the IRS

Any alternative that is considered could include statutory provisions to require the State Department to collect relevant information, including the social security numbers, forwarding foreign addresses, new country of residence and citizenship and, in the case of individuals with a net worth in excess of $1 million, a balance sheet, of the expatriates and provide such information routinely to the IRS. Such provisions may be modelled after present-law section 6039E.

3. Enhance compliance by U.S. citizens and green-card holders residing outside the United States

The Congress, Treasury Department and the IRS would undertake a project to improve compliance of U.S. citizens and green-card holders residing outside the United States with tax return filing responsibilities.

APPENDICES

Appendix A:

Comparison of Saving Clause Provisions in Bilateral U.S. Tax Treaties

Summarized below are the different types of saving clause provisions in bilateral U.S. income tax treaties currently in force. The following three tables are lists of U.S. income tax treaties that:

(1) Contain saving clauses that preserve the right of the United States to tax current citizens but do not expressly mention former citizens ("Category I");

(2) Contain saving clauses that expressly apply to current and former citizens (for 10 years after the loss of citizenship if such loss had as one of its principal purposes the avoidance of tax) ("Category II"); and

(3) Contain saving clauses that expressly apply to current and former citizens after the loss of citizenship regardless of the reason for such loss ("Category III").

Appendix Table A–1.—Treaties That Contain Saving Clauses That Preserve the Right of the United States To Tax Its Current Citizens But Do Not Expressly Mention Former Citizens

U.S. Treaty Partners	Year of Treaty	Article No.	Notes
Austria	1956	XV(1)	
Belgium	1970	23(1)	
Bermuda	1986	4(1)	
China	1984	Protocol 2	
Denmark	1948	XV	
Egypt	1980	6(3)	
Greece	1950	XIV	
Iceland	1975	4(3)	
Ireland	1949	II	(1)
Japan	1971	4(3)	
Korea	1976	4(4)	
Luxembourg	1962	XVI(1)(a)	
Malta	1980	1(3)	
Morocco	1977	20(3)	
Pakistan	1957	II	(1)
Philippines	1976	6(3)	
Poland	1974	5(3)	
Romania	1973	4(3)	
Sweden	1939	XIV(a)	
Switzerland	1951	XV1(a)	
Trinidad and Tobago.	1970	3(3)	
USSR	1976	VII	
United Kingdom	1975	1(3)	

Notes to Appendix Table A–1: (1) The U.S.-Ireland treaty and the U.S.-Pakistan treaty do not contain a specific saving clause. Instead, the treaties provide that a resident of Ireland or Pakistan does not include a U.S. citizen. The intent of the provision is to preserve the right of the United States to tax its citizens.

Appendix Table A–2.—Treaties That Contain Saving Clauses That Expressly Apply to Current and Former Citizens (for 10 Years After the Loss of Cititizenship if Such Loss Had as One of Its Principal Purposes the Avoidance of Tax)

U.S. Treaty Partners	Year of Treaty	Article No.	Notes
Australia	1982	1(3)	(1)
Barbados	1984	1(3)	(1)
Canada	1984	29(2) Protocol 13(2)	(1)
Cyprus	1984	4(3)	(1)
Finland	1989	1(3)	(1)
France	1967	22(4)(a)	(2)
Germany	1989	4 Protocol 1(a)	(2)
India	1989	1(3)	(1)
Indonesia	1988	28(3)	(1)
Israel	1975	6(3)	(1) & (3)
Italy	1984	1(2)(b) Protocol 1(1)	(1)
Jamaica	1980	1(3)	(2)
Mexico	1992	1(3)	(1)
Netherlands	1992	24(1)	(2) & (4)
New Zealand	1982	1(3)	(1)
Norway	1971	22(3) Protocol IX	(2)
Spain	1990	1(3) Protocol 1	(1) & (3)
Tunisia	1985	22(2)	(1) & (5)

Notes to Appendix Table A–2:

(1) The tax avoidance motive is determined by whether there is avoidance of any tax.

(2) The tax avoidance motive is determined by whether there is avoidance of *income* tax.

(3) Competent authorities shall consult on the purpose of the loss of citizenship.

(4) The saving clause does not apply to nationals of the Netherlands.

(5) Tax avoidance motive must be acknowledged by the taxpayer or determined by a court. There is also no limit on the number of years that a country may tax its former citizens.

Appendix Table A–3.—Treaties That Contain Saving Clauses That Expressly Apply to Current and Former Citizens After the Loss of Citizenship Regardless of the Reason of Such Loss

U.S. Treaty Partners	Year of Treaty	Article No.	Notes
Czech Republic	1993	1(3)	(1)
Hungary	1979	1(2)	(1)
Russia Federation	1992	1(3)	(1)
Slovak Republic ...	1993	1(3)	(1)

Notes to Appendix Table A–3: (1) No restriction on the number of years that either country may tax a former citizen and no requirement that the former citizen expatriated with a tax avoidance motive.

Appendix B:

Summary of Other Countries' Taxation of Expatriation and Immigration

Overview

The following is a preliminary survey of other countries' taxation of citizens and residents.[1] While not an exhaustive survey, it reveals that most nations generally tax the worldwide income of their residents, whether citizens or aliens, but only the domestic source income of their nonresidents, whether citizens or aliens. Hence, unlike in the United States, the criterion of residence rather than citizenship is central to the liability to tax in these countries. Two exceptions are the Philippines, a former U.S. colony, and Eritrea. The Philippines and Eritrea also tax their nonresident citizens on their worldwide income. Prior to 1981, Mexico also asserted tax jurisdiction on the worldwide income of its citizens.[2]

Several European countries impose income tax on their former citizens or residents for some period of time after they become nonresidents. Australia, Canada, and Denmark are the only countries that impose an exit tax when a resident leaves the country. The Danish departure tax generally is less expansive than those of Australia or Canada. Also, it is generally the case that among those countries that tax capital gains, the gain is taxed upon realization by a resident taxpayer, regardless of whether some part of that gain may have accrued to the individual prior to his or her immigration to such country. Australia, Canada, Denmark, and Israel are exceptions to this general rule.

It appears that a limited number of countries attempt to tax former residents and that a smaller group impose an exit tax. With the exception of Australia and Canada, the breadth of any such taxation is narrower than that proposed in the Administration's fiscal year 1996 budget proposal, the Senate amendment to H.R. 831, S. 700, or H.R. 1535.

The relevant provisions relating to taxation of former residents, exit taxes, and the taxation of immigrants' accrued gains are described below.

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[1] The Joint Committee staff conducted this survey with the assistance of the staff of the Law Librarian of the Library of Congress. The Joint Committee staff also has consulted primary sources and outside practitioners. The results reported should not be interpreted as an authoritative representation of foreign laws, but rather as a preliminary summary of foreign tax statutes.

[2] Richard D. Pomp, "The Experience of the Philippines in Taxing Its Nonresident Citizens," in Jagdish N. Bhagwati and John Douglas Wilson (eds.), *Income Taxation and International Mobility* (Cambridge: The MIT Press), 1989.

Taxation of former residents

Eritrea

On February 10, 1995, Eritrea enacted a new tax law that applies only to its nonresident citizens. The law imposes a two-percent tax on the net income of non-resident citizens. The Eritrean Ministry of Foreign Affairs is responsible for collecting such taxes through its embassies and consulates. It is unclear what the tax status is of an Eritrean who gives up his citizenship.

Finland

Generally a person who has his permanent residence in Finland is subject to taxation on his worldwide income and wealth.[3] For three years subsequent to departing Finland, a Finnish citizen is liable for Finnish income and wealth taxes on his worldwide income and wealth unless he can establish that no "essential ties" with Finland are maintained. The three-year, "essential ties" rule is interpreted by the individual's facts and circumstances. Among circumstances that create essential ties are the individual's family residing in Finland; the individual carries on business activities in Finland; the individual owns real estate in Finland; and the individual is not permanently staying abroad perhaps for reasons of pursuing studies or a limited employment assignment. After three years, the individual is taxed as a nonresident unless the tax authorities can establish otherwise. The three-year rule does not apply for the purpose of inheritance taxation.

In practice the three-year rule often may be overridden by bilateral tax treaties to avoid double taxation of the individual.[4] Even where a tax treaty overrides the three-year rule, the Finnish citizen still is required to file an annual tax return.

France

As provided by the France-Monaco income tax treaty, France can tax as a French resident any French citizen who resides in Monaco regardless of whether they resided in France or in another country prior to establishing residence in Monaco.[5] Cooperation between the tax authorities of France and Monaco provides enforcement of this arrangement. Treaty arrangements between France and Monaco regarding inheritance taxes are not as stringent as those governing income taxes. Non-French sited property of a French citizen residing in Monaco is exempt from French inheritance taxation if the individual had resided in Monaco for more than five years prior to death.

Aside from the unique agreements with Monaco, emigration from France generally creates no French tax liability under either the income or inheritance taxes. However, French citizens and other nonresidents are liable for income tax on French-source income. In the case of nonresidents who own property in France and reside in tax haven or nontreaty countries, France asserts the right to tax

[3] Finland is one of a number of European countries that imposes an annual net wealth tax.

[4] Finland's treaty with the United States eliminates the three-year rule to preclude double taxation.

[5] An exception to this rule arises in the case of an individual holding dual citizenship. If such an individual moved to Monaco from a country other than France he may claim the nationality of the other country to avoid taxation as a French citizen.

income from such property assumed to equal three times the fair market rental value of such property.[6] In practice, such tax is infrequently collected.

Germany

Germany imposes a so-called "extended limited tax liability" on German citizens who emigrate to a tax-haven country or do not assume residence in any country and who maintain substantial economic ties with Germany (measured based on the relative amount of the individual's German source income or assets). The regime applies to both the German income tax and inheritance tax. This tax applies to a German citizen who was a tax resident of Germany for at least five years during the 10-year period immediately prior to the cessation of his residence. A German national need not relinquish his citizenship for the tax to apply. The individual is taxed as a German resident for 10 years after expatriation. The provision taxes the individual as a German resident on all income that is not treated as foreign source income for German tax purposes.[7] This provision is similar to the present-law provision of the United States. However, the tax applies only to taxable income in excess of DM32,000 ($19,839).[8] In the case of expatriation to countries with which Germany maintains tax treaties, the tax treaties generally take precedence over the extended limited tax liability. Any issues of double taxation are dealt with by treaty.[9]

While Germany generally exempts from tax the long-term capital gains realized by individuals, gains from the disposition of business assets are subject to tax as business income. More specifically, Germany exempts long-term gains realized on personal portfolio assets, but holdings of certain substantial interests are considered to be business assets and any gain subject to tax as business income upon their disposition. Such gains are taxed at one-half the ordinary individual tax rate. A long-term (at least 10-year) resident of Germany, regardless of citizenship, who terminates his residence is deemed to have disposed of his ownership in certain German corporations. Specifically, the individual is treated as having sold his interest in domestic corporations in which he owns more than 25 percent. The gain from the deemed sale of up to DM30 million ($18.6 million) is taxed at half of the regular tax rate. The taxpayer may pay the tax ratably over five years. No tax liability applies under the provision if the termination of residence is temporary and the period of nonresidence does not exceed five years.[10] If the taxpayer held the interest in the German corporation when he first became a German resident, he may use the fair market value of the stock (in lieu of the historical cost) at the time he became a resident in computing the gain.

These provisions apparently were enacted in response to the expatriation of certain wealthy individuals, many of whom were high-

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[6] Expatriate French citizens are exempt from this tax for their first two years of residence in a tax haven or nontreaty country.

[7] This generally implies that only German domestic-source income is subject to tax.

[8] United States dollar value calculated at the estimated average daily 1994 exchange rate value as calculated by OECD, Organization for Economic Cooperation and Development, *OECD Economic Outlook*, vol. 56, December 1994.

[9] See Parts V.F. and V.G. and Appendix A for a discussion of the issue of double taxation and the interaction of such a provision with current U.S. tax treaties.

[10] The tax authorities may extend this period for an additional five years.

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ly visible to the general public as athletic or artistic performers. The Joint Committee staff was unable to find any information regarding the extent of any revenue raised by these provisions. Enforcement of the deemed disposition provision may be difficult with respect to its application to substantial participation in foreign companies. The extended limited tax liability generally only applies to German-source income and, in principle, should be enforceable. However, these provisions can be avoided by relocating the taxpayer's property outside Germany.

The Netherlands

The Netherlands generally does not tax the capital gains realized by resident or nonresident taxpayers. However, a resident of the Netherlands is subject to tax on the sale of a "substantial interest" in a company, whether the company is a Dutch company or a foreign company. Generally a substantial interest is one-third or greater ownership in a company. Joint ownership with family members counts towards determining whether an interest is substantial.

Because the Netherlands taxes residents, rather than citizens, any tax that would be owed on the sale of a substantial interest in a foreign-sited business may be easily avoided by the owner emigrating, that is, becoming a nonresident, and selling the interest in the business. The change in residency does not necessitate a change in citizenship. However, in the case of a business located in the Netherlands, the Netherlands asserts taxation authority of sales of substantial interests by nonresident owners. The ability to enforce such taxation may be precluded by income tax treaties. The general policy of the Netherlands is to secure the right to tax the sale of substantial interests in Netherlands' companies for a period of five years after emigration. In some cases, the treaty provisions permit the Netherlands to tax former residents only if they are nationals of the Netherlands. Avoidance of these tax arrangements can be accomplished if the owner of a substantial interest is willing to relocate to a country with an income tax treaty less favorable to the Netherlands' tax authority. For example, a resident of the Netherlands could move to Belgium and wait five years prior to sale under the current income tax treaty between the two countries.

In addition to the sale of substantial interests, the Netherlands taxes the sale of business assets. The Netherlands has adopted certain provisions to prevent the emigration of a taxpayer to avoid payment of tax on the sale of business assets. A taxpayer who emigrated from the Netherlands and terminates his Netherlands business is subject to tax at the date of emigration. The gain subject to tax is calculated at the fair market value of the business assets and reserves less the adjusted basis of such assets. If the taxpayer were to emigrate, but not sell his business, there would be no tax liability as the business remains subject to Netherlands tax. If a resident or nonresident transfers a Netherlands business abroad, the transfer is subject to tax at the date of the transfer. Gain or loss is calculated as the difference between fair market value of the assets transferred and the taxpayer's adjusted basis.

The Netherlands also attempts to tax taxpayers who move pension fund assets out of the Netherlands. In the Netherlands, contributions to pension funds generally are exempt from income tax and distributions are taxable. Under a provision effective January 1, 1995, a taxpayer is deemed to have received the fair market value of pension assets at the moment immediately preceding the transfer of such assets outside of the Netherlands. However, the tax does not apply if the pension distributions will be taxed in the foreign jurisdiction in which a former resident lives at the time of distribution. A similar provision applies to certain annuity payments. An emigre may obtain an extension of time to pay the tax on annuities and the taxpayer is not liable if the taxpayer does not redeem the annuity rights within five years of emigration.

A Dutch citizen who emigrates continues to be treated as a resident of the Netherlands for 10 years following emigration for gift and inheritance tax purposes.[11]

Norway

Norway asserts tax liability on the worldwide income of individuals and businesses that reside in Norway. A former resident may still be considered resident for purposes of the income tax if he keeps a home in Norway which is not let out and is unable to prove that he is considered resident for tax purposes in the country in which he is living. All remuneration (including pension distributions) derived from employment in Norway or paid to a manager or member of the Board of Directors of company resident in Norway is liable for Norwegian income taxes regardless of the individual's country of residence.

If a business enterprise becomes nonresident, activity previously liable for income taxation is considered ceased and income tax is assessed as if the business or the assets were sold. If a limited liability company leaves Norway, the company has to be liquidated in Norway with whatever tax consequences may arise from liquidation. Individuals who terminate their residence, whether for tax purposes or not, and who dispose of shares in a Norwegian company or partnership within five years of the year in which residence is terminated are liable to Norway for tax on gains realized from such disposition. This rule does not apply to the disposal of bonds or certain other securities.

For income considered earned in Norway, Norway claims the primary right of taxation and makes no provision for relief from double taxation that might arise by another country. In practice, tax treaties may modify this outcome.

A business paying wages and salaries and distributing pension benefits is responsible for withholding taxes on such income regardless of the individual's country of residence. This ensures some enforcement of the provisions relating to the taxation of compensation paid to former residents. A limited liability company, however, is not responsible for taxes derived from the sale of the company's shares. As this particular provision has only been in effect since 1992 there is no experience regarding how this provision will be en-

[11] See Appendix C for a summary of inheritance taxation in the Netherlands.

forced. As a general matter, Norway has concluded treaties regarding tax enforcement only with the other Nordic countries.[12]

Philippines

As noted above, like the United States, the Philippines asserts tax liability on all citizens based on their worldwide income. A nonresident citizen is one who establishes to the satisfaction of the revenue authorities his physical presence abroad with the definite intention of residing there. Nonresident citizens are taxed separately on their income from sources within the Philippines and on income from sources outside the Philippines. Tax rates on income from sources within the Philippines range from one to 35 percent. The tax imposed on income from sources outside the Philippines permits a personal exemption and then has three rate brackets: one percent on income greater than $0 and less than or equal to $6,000;[13] two percent on income greater than $6,000 and less than or equal to $20,000; and three percent on income in excess of $20,000. Relief from double taxation is provided by permitting nonresident Filipinos to deduct any national income tax paid to a foreign country against non-Philippine source income for purposes of computing the tax liability on such non-Philippine source income.

While the Philippines do collect revenue under these tax provisions, the tax is not considered to be effectively enforced. There is little coordination between the Philippine tax and immigration authorities.

The estate of a Philippine citizen is subject to Philippine estate tax regardless of whether the individual is a resident or nonresident at the time of death.[14]

Sweden

A Swedish citizen or resident remains a resident for income tax purposes as long as he maintains essential ties with Sweden. If the individual was a resident of Sweden for at least 10 years, he is deemed a resident for five years following departure unless the individual can establish that he has not maintained essential ties with Sweden. If after the initial five-year period the Swedish government can establish that the individual has maintained essential ties with Sweden, or created new essential ties, the individual will continue to be taxed as a Swedish resident. Through the creation of new essential ties, it is possible for an individual who had become a nonresident for tax purposes to be reinstated as a resident for tax purposes. "Essential ties" to Sweden can include a family present in Sweden, a home available for use in Sweden, and the extent of economic activity in Sweden.

In the case of an individual who leaves Sweden to take up residence in a country with which Sweden has a tax treaty the effect of this deemed status as a Swedish resident is generally overridden. However, a number of Swedish tax treaties does not cover the Swedish net wealth tax. Hence an individual can be a resident

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[12] The United States also has a tax treaty with Norway. It is beyond the scope of this study to compare the enforcement provisions of the U.S.-Norway treaty with Norway's other treaties.

[13] The income of nonresident citizens from sources outside the Philippines is taxed on the basis of income expressed in U.S. dollars. The local currency is the peso.

[14] A summary of the Philippine estate tax is provided in Appendix C.

of Sweden for net wealth tax purposes and a resident of another country for income tax purposes.[15] In the case of countries with which Sweden has no tax treaty in force, Sweden does not provide a credit or deduction for foreign taxes paid by the individual in his country of residence. This creates the potential for double taxation of income.

Imposition of exit tax on citizens or long-term residents

Australia

As a part of its income tax, Australia taxes gains accrued by residents, but unrealized, at the time of their death. Australia imposes an exit tax when an Australian resident (including an Australian citizen) leaves the country. For purposes of the exit tax, the resident is treated as having sold all of his non-Australian assets at fair market value at the time of departure. An election is available for a taxpayer to defer the tax from the deemed sale on any asset until it is sold. Electing individuals are expected to report voluntarily their gains and associated tax upon a subsequent disposition.[16] No security is required to obtain the deferment of tax.

There may be significant potential for noncompliance with respect to such an exit tax. Assets that leave the country before the resident leaves are effectively beyond the reach of the Australian tax authorities.

Canada

A taxpayer is deemed to have disposed of all capital gain property at its fair market value upon the occurrence of certain events, including death or relinquishment of residence. Like Australia, a departing individual may elect to defer the tax on the accrued gain on any asset until the asset is sold. However, the Canadian tax authorities generally require an electing taxpayer to provide security necessary to ensure that the deferred tax will be collected.

Denmark

Prior to January 1, 1995, if an individual left Denmark after having been a permanent resident for at least four years, he remained a resident for income tax purposes for up to an additional four years unless he could establish that he would be subject to a substantially equivalent income tax in his new country of residence. Effective January 1, 1995, a Danish citizen can achieve nonresident status immediately upon leaving Denmark if whole-year accommodations were no longer available to him in Denmark. Danish income tax generally applies to capital gains realized on shares in corporations and other financial instruments when realized and to pension income when distributed. However, nonresidents are not

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[15] Similar provisions apply for inheritance tax purposes.

[16] Nonresidents are subject to capital gains tax on taxable Australian assets including real property situated in Australia, stock holdings in non-publicly traded Australian companies, stock holdings in publicly traded companies where the nonresident shareholder (and related parties) hold 10 percent or more of the stock, interests in Australian partnerships, and holdings in Australian unit trusts (i.e., mutual funds) where the nonresident owner (and related parties) hold 10 percent or more of the unit trust. Bilateral income tax treaties often preclude taxation by one treaty country of capital gains realized by residents of the other treaty country, except for gains from the disposition of real property situated in the first country. The U.S.-Australia income tax treaty, however, generally allows each country to tax capital gains from sources in that country realized by residents of the other country.

liable for Danish income tax on Danish-source capital gains on shares or bonds. Pension distributions received by nonresidents from Danish pension plans are liable for Danish income tax, but many tax treaties effectively override this provision of Danish law.

Since 1987, Denmark has imposed a departure tax on certain unrealized capital gains and certain pension assets. An individual who has been resident for at least five of the preceding 10 years and who becomes a nonresident under Danish law or who becomes a resident of another country as provided under treaty is deemed to have disposed of bonds, certain holdings of stock, and certain other financial instruments. The deemed disposal of stock applies to stock owned by shareholders who hold at least 25 percent of the share capital in the company or who control more than 50 percent of the voting power. Shareholders of less substantial interests also are subject to the tax if the shares have been held for at least three years. For stock listed on exchanges, an exemption of Dkr105,000 ($16,614)[17] applies to the aggregate of all the individual's exchange listed stock. In addition, for publicly traded financial instruments subject to the departure tax, losses are deemed to be realized so that only net gains are subject to the tax. For unlisted shares, the value for the purpose of determining gain is determined by a formula that in practice often may understate market value. The deemed disposition also applies to an individual's business assets for the purpose of depreciation recapture. In addition, certain pension contributions made in the five years prior to an individual's removal from Denmark are subject to tax.

Payment of the tax liability may be postponed (with security) until actual sale occurs or the shareholder dies. If the shares are sold at a lower price while the individual is a nonresident, the departure tax is recalculated. If the individual repatriates prior to sale of the assets, the departure tax liability is cancelled. In addition, there are provisions for double tax relief in the case where the individual's new country of residence imposes a tax on the actual sale.

Apparently the departure tax was imposed in response to the expatriation to other European countries of certain high net worth individuals who held substantial interests in Danish businesses. While no statistics are available on the amount of revenue collected by the departure tax, the perception is that the provisions have had some effect on the expatriation decision of such individuals.

Treatment of accrued gains of immigrants

If an individual emigrates from one country to another and if the former country either imposes a tax upon accrued gain at the time of exit or asserts tax liability on former residents, double taxation of income from capital gain may occur. This problem would be eliminated if the immigrant country were to forgo taxation of any gain accrued on property owned by an immigrant prior to his or her immigration. Both Australia and Canada, countries with an exit tax, forgo taxation of gain accrued prior to immigration. An individual who becomes an Australian resident is permitted to take

[17] United States dollar value calculated at the estimated average daily 1994 exchange rate value as calculated by OECD, Organization for Economic Cooperation and Development, *OECD Economic Outlook*, vol. 56, December 1994.

a basis in his non-Australian assets equal to their fair market value at that time, for all purposes. The step-up is not a taxable event in Australia. An individual who becomes a Canadian resident also is permitted to take a basis in his non-Canadian assets equal to their market value at that time, for all purposes. The step-up is not a taxable event in Canada. In both Australia and Canada, the exemption for previously accrued gain is permanent regardless of whether the individual subsequently sells the asset or holds it until death. Since November 2, 1994, Denmark has provided a step up in value of assets held by an individual who becomes a tax resident of Denmark. Also as noted above, for the purpose the German deemed tax on the sale of certain substantial interests in German corporations, if the taxpayer held the interest in the German corporation when he first became a German resident, he may use the fair market of the stock (in lieu of the historical cost) at the time he became a resident in computing the gain.

Israel offers a limited exemption for gain accrued prior to immigration. Immigrants are exempt from tax on capital gains from the realization of assets which they possessed prior to immigrating to Israel and which are sold within seven years of immigration.[18] If such property is sold more than seven years after immigration, the entire gain is subject to Israeli tax.

Australia, Canada, Denmark, and Israel appear to be exceptions. Most countries do not offer immigrants a step-up in basis on their assets (Australia, Canada, and Denmark) or a limited exemption (Israel). Among countries surveyed, the following countries tax the realized capital gains of residents, including gain accrued by immigrants prior to immigration: Chile, Columbia, Czech Republic, Denmark, Ecuador, Finland, France, India, Iran, Ireland, Japan, Korea, Mexico, Norway, Pakistan, Philippines, Portugal, Spain, Sweden, Taiwan, United Kingdom, and Venezuela.[19]

Among the countries listed above as imposing taxes on former residents, Germany generally exempts from income taxation gains on assets held for longer than six months.[20] The Netherlands also generally exempts gain from tax except with respect to business assets and substantial interests in a Dutch company.

[18] The exemption appears to extend to any gain that accrues to the asset during the immigrant's first seven years in Israel.

[19] Among countries listed above as imposing taxes on former residents, no information was found relating to the taxation of capital gains in Eritrea.

[20] Germany subjects to income taxation gains from the sale of certain "speculative" assets and gain from the sale of real estate held for less than two years.

Appendix C:

Summary of Other Countries' Taxation of Estates, Inheritances, and Gifts

Overview

The material below surveys the estate or inheritance tax and gift tax systems of the following countries: Australia, Austria, Bahamas, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Portugal, the Philippines, Singapore, Spain, Sweden, Switzerland, Turkey and the United Kingdom.[1] Among countries surveyed in Appendix B above regarding exit taxation, the Joint Committee staff could find no information regarding estate, inheritance, or gift taxation in Eritrea.[2] Part II. A. 2. above describes the U.S. estate, gift, and generation shipping taxes.

Among the countries surveyed, an inheritance tax is more common than an estate tax as is imposed in the United States. An inheritance tax generally is imposed on the transferee or donee rather than on the transferor or donor. That is, the heir who receives a bequest is liable for a tax imposed and the tax generally depends upon the size of the bequest received. The United States also imposes a generation skipping tax in addition to any estate or gift tax liability on certain transfers to generations two or more younger than that of the transferee. This effectively raises the marginal tax rates on affected transfers. Countries that impose an inheritance tax do not have such a separate tax but may impose higher rates of inheritance tax on bequests that skip generations.

The survey generally reveals that the U.S. estate and gift tax by exempting transfers between spouses, by its effective additional exemption of $600,000 through the unified credit, and by its $10,000 annual gift tax exemption per donee, may have a larger exemption (a larger zero-rate tax bracket) than many other developed countries.[3] However, because most other countries have inheritance taxes, the total exemption depends upon the number and type of

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[1] These are the OECD countries plus Bahamas, Korea, the Philippines and Singapore.

[2] The information is a summary prepared by the Joint Committee staff prepared with the assistance of the staff of the Law Librarian of the Library of Congress. The Joint Committee staff derived these summaries primarily from the examination of secondary materials and the summary is not intended as an authoritative representation of foreign laws, but rather as a summary of the primary features of certain foreign wealth transfer statutes. The primary sources used in developing this summary were: Organization for Economic Cooperation and Development, *Taxation of Net Wealth, Capital Transfers and Capital Gains of Individuals*, (Paris: OECD), 1988; W. H. Diamond, ed., *Foreign Tax and Trade Briefs*, (New York: Matthew Bender), 1995; and G. J. Yost, ed., *1993 International Tax Summaries*, (New York: John Wiley, Coopers and Lybrand International Tax Network), 1993.

[3] In the survey of countries, except in the case of the Philippines, all conversions to dollar amounts are made using the OECD's estimated average daily exchange rate for 1994, from Organization for Economic Co-Operation and Development, *OECD Economic Outlook*, vol. 56, December 1994.

beneficiaries. While the effective exemption may be larger, with the exception of transfers to spouses which are untaxed, marginal tax rates on taxable transfers in the United States generally are greater than those in other countries. This is particularly the case when comparing transfers to close relatives, who under many inheritance taxes face lower marginal tax rates than do other beneficiaries. On the other hand, the highest marginal tax may be applied at a greater level of wealth transfer than in other countries. Again, it is often difficult to make comparisons between the U.S. estate tax and countries with inheritance taxes because the applicable marginal tax rate depends on the pattern of gifts and bequests.

What the survey cannot reveal is the extent to which the practice of any of the foreign transfer taxes is comparable to the practice of transfer taxation in the United States. For example, in the United States, transfers of real estate generally are valued at their full and fair market value. In Japan, real estate is assessed at less than its fair market value. Land is assessed for inheritance tax purposes according to a valuation map known as *Rosen Ka*. The *Rosen Ka* values range from 25 to 80 percent of fair market value.[4] Also, unclear in the description below of various estate and inheritance taxes is the ability of transferors to exploit legal loopholes. Again, using Japan as an example, prior to 1988 a transferor could reduce inheritance tax liability by adopting children to increase the number of legal heirs.[5] Such adoptees of convenience would receive nominal compensation for agreeing to be an adoptive child. The larger the number of children, the greater the total exemption for inheritance taxes in Japan, even if not all children receive a bequest. This legal loophole was said to be widely recognized and exploited by wealthy families.[6]

Appendix Table C-1 below compares total revenue collected by OECD countries from estate, inheritance, and gift taxes to total tax revenue and to gross domestic product (GDP) to attempt to compare the economic significance of wealth transfer taxes in different countries. Among the OECD countries Belgium, Denmark, France, Greece, and Japan collect more such revenue as a percentage of GDP than does the United States. Switzerland the Netherlands collect modestly less revenue from such taxes as a percentage of GDP than does the United States.

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[4] Thomas A. Barthold and Takatoshi Ito, "Bequest Taxes and Accumulation of Household Wealth: U.S.-Japan Comparison," in Takatoshi Ito and Anne O. Kreuger (eds.), *The Political Economy of Tax Reform* (Chicago: The University of Chicago Press), 1992, pp. 250-251.

[5] Adoption by another did not cause an adoptee to lose his or her legal right to be an heir of his or her biological parents.

[6] Barthold and Ito, "Bequest Taxes and Accumulation of Household Wealth," p. 249.

Appendix Table C–1—Revenue From Estate, Inheritance and Gift Taxes as a Percentage of Total Tax Revenue and GDP in OECD Countries, 1992

Country	Percentage of Total Tax Revenue	Percentage of GDP
Australia	0.000	0.000
Austria	.182	.079
Belgium	.735	.334
Canada	.002	.001
Denmark	.555	.274
Finland	.456	.214
France	.929	.405
Germany	.253	.100
Greece	1.039	.421
Iceland	.216	.072
Ireland	.304	.112
Italy	.138	.058
Japan	2.006	.590
Luxembourg	.320	.155
Netherlands	.526	.247
New Zealand	.292	.105
Norway	.191	.089
Portugal	.252	.083
Spain	.366	.131
Sweden	.166	.083
Switzerland	.854	.264
Turkey	.111	.026
United Kingdom	.584	.206
United States	.907	.267

Source: Organization for Economic Cooperation and Development, "Revenue Statistics of OECD Member Countries, 1965–1993" (Paris: OECD), 1994.

The United States is a wealthy country, with higher average household wealth than most of the countries surveyed. While exemption levels are higher in the United States than most other countries, a significant amount of accumulated wealth still may be subject to estate and gift taxation as compared to the other countries. The data in Appendix Table C–1 do not reveal the extent to which estate, inheritance, and gift taxes fall across different individuals within each country. In the United States, of the approximately 2.2 million deaths in 1993, only approximately 28,000 or 1.3 percent of decedents, gave rise to any estate tax liability. Similar data were not available for the other countries in this survey.

Specific country estate, inheritance, and gift tax provisions

Australia

Australia imposes neither an estate, inheritance, nor gift tax. However, the transferee receiving assets with accrued capital gains transferred at death retains the transferor's basis in the assets.[7] Assets with accrued gains transferred by gift are treated as disposed and the gain includible in the transferor's income subject to income taxation. Such gains are indexed for increases in consumer prices.

Austria

Austria imposes an inheritance tax and a gift tax. The tax applies to all transfers made or received by residents and to transfers of certain Austrian property by nonresidents. Austrian citizens are treated as residents for purposes of the inheritance tax for two years after emigration.

The first Sch30,000 ($2,643) of inheritances received by the spouse, children, or grandchildren are exempt from tax. For siblings, in-laws, nephews, and nieces the first Sch6,000 ($529) are exempt. For other inheritances, the first Sch1,000 ($132) are exempt. In addition, transfers by gift to a spouse are exempt up to Sch100,000 ($8,811) per ten-year period.

For taxable transfers there are five different tax rate schedules: spouse and children; grandchildren; lineal ascendants and siblings; in-laws, nephews, and nieces; and all others. For spouses and children, marginal tax rates begin at two percent on the first Sch100,000 ($8,811) of taxable transfers and rise to 15 percent on taxable transfers in excess of Sch60 million ($5.286 million). For grandchildren, marginal tax rates begin at four percent on the first Sch100,000 of taxable transfers and rise to 25 percent on taxable transfers in excess of Sch60 million. For lineal ascendants and siblings, marginal tax rates begin at six percent on the first Sch100,000 of taxable transfers and rise to 40 percent on taxable transfers in excess of Sch60 million. For in-laws, nephews and nieces, marginal tax rates begin at eight percent on the first Sch100,000 of taxable transfers and rise to 50 percent on taxable transfers in excess of Sch60 million. For all others, marginal tax rates begin at 14 percent on the first Sch100,000 of taxable trans-

[7] Where the beneficiary is a tax-exempt person, the asset is treated as disposed and the gain includible in the decedent's income subject to income taxation.

fers and rise to 60 percent on taxable transfers in excess of Sch60 million.

Bahamas

The Bahamas has no estate tax, inheritance tax, gift tax, wealth tax, or income tax. However, a four-percent probate duty is levied on any gross personal estate situated in the Bahamas.

Belgium

Belgium imposes an inheritance tax and a gift tax. The tax applies to all transfers of property upon the death of a resident and to the transfer of immovable property located in Belgium on the death of a nonresident. All immovable property located in Belgium and moveable, securitized property are subject to tax upon transfer by gift.

Any transfer from an estate of less than BF25,000 ($752) is exempt from tax. The first BF500,000 ($15,042) plus an additional BF50,000 ($1,504) for each minor child for each remaining year of minority of transfers to a spouse is exempt from tax for transfers at death. For a child, the first BF500,000 plus BF100,000 ($3,008) for each remaining year of minority is exempt from tax.

For taxable transfers, there are four different tax rate schedules: spouses and direct descendants; siblings; uncles, aunts, nephews, and nieces; and all others. For spouses and direct descendants, marginal tax rates begin at three percent on the first BF500,000 of taxable transfers and rise to 25 percent on taxable transfers in excess of BF20 million ($601,685). For siblings, marginal tax rates begin at 20 percent on the first BF500,000 of taxable transfers and rise to 65 percent on taxable transfers in excess of BF7 million ($210,590). For uncles, aunts, nephews, and nieces, marginal tax rates begin at 25 percent on the first BF500,000 of taxable transfers and rise to 70 percent on taxable transfers in excess of BF7 million. For all other transferees, marginal tax rates begin at 30 percent on the first BF500,000 of taxable transfers and rise to 80 percent on taxable transfers in excess of BF7 million. Proportional taxes of 1.1 percent, 6.6 percent, or 8.8 percent are levied on gifts to certain charities, nonprofit organizations, and local governments.

Canada

Canada imposes neither an estate tax, an inheritance, nor a gift tax. However, gains accrued on assets held by a taxpayer at the time of his death are treated as realized and taxable as income to the taxpayer. In the case of property transferred to a spouse at death, the spouse is treated as having acquired the asset at the transferor's basis. Assets with accrued gains transferred by gift are treated as if transferred at the death of the transferor.

Denmark

Denmark imposes an inheritance tax and a gift tax. All transfers at death by a resident are liable for the tax. Transfers at death of real property in Denmark by nonresidents are liable for the tax. The gift tax applies if either the donor or donee is a resident, but only if the donee is a spouse, child, grandchild, parent, or grand-parent. Others who receive gifts must include them in income for income tax purposes.

The first Dkr8,000 ($1,266) of gifts is exempt from gift tax. For transfers at death, the spouse is exempt on the first Dkr100,000 ($15,823). For transfers at death, children, grandchildren, siblings (if they have lived together for ten years), and parents of minor children are exempt on the first Dkr8,000.

For taxable transfers at death, there are four different tax rate schedules: spouse; children, grandchildren, siblings (if they have lived together for ten years), and parents of minor children; parents and siblings; and others. For spouses, marginal tax rates begin at 13 percent on the first Dkr60,000 ($9,494) and rise to 32 percent on taxable transfers in excess of Dkr900,000 ($142,405). For children, grandchildren, siblings (if they have lived together for ten years), and parents of minor children, marginal tax rates begin at two percent on the first Dkr2,000 ($316) of taxable transfers and rise to 32 percent on taxable transfers in excess of Dkr992,000 ($156,962). For parents and siblings, marginal tax rates begin at 10 percent on the first Dkr2,000 of taxable transfers and rise to 80 percent on taxable transfers in excess of Dkr1million ($158,278). For others, marginal tax rates begin at 15 percent on the first Dkr1,000 ($158) and rise to 90 percent on transfers in excess of Dkr1 million. Gifts are generally taxable on the same schedule, except for gifts to children or grandchildren. In that case, marginal tax rates begin at 0.5 percent and rise to 32 percent on taxable transfers in excess of Dkr1million. Gifts or inheritances, other than works of art, manuscripts, and similar items transferred to charitable organizations are taxed at a flat (no exemption) 35 percent tax rate or a flat 12 percent tax rate if the gift is deemed to be for the public benefit.

Finland

Finland imposes an inheritance tax and a gift tax. All transfers at death by residents except for certain immovable foreign property are subject to tax. All transfers at death of Finnish property by nonresidents are subject to tax. All gifts of Finnish property are subject to tax and for resident gifts of certain foreign property are subject to tax.

The first Mk37,500 ($7,217) of transfers to a spouse is exempt from tax. For a child, or child's heir, the first Mk7,500 ($1,443) plus Mk1,500 ($289) for each year the child is under age 18 is exempt from tax. In addition, the spouse and children are exempt on the first Mk15,000 ($2,887) of personal property transferred. Employees who have cared for the deceased for the prior ten years may exclude up to 12 percent of their earned income from the tax base.

For taxable transfers, there are three different tax rate schedules: spouse, parent, child or child's direct heir; siblings and persons who have been at least ten years in the service or taking care of the deceased; and others. For spouses, parents, children, and children's heirs, tax rates begin at a flat Mk200 ($38) on the first Mk15,000 of taxable transfers, followed by a six percent marginal tax rate on the next Mk12,500 ($2,406), and rise to a 14 percent marginal tax rate on taxable transfers in excess of Mk2.1 million ($404,157). For siblings and persons who have been in service of the deceased, the applicable tax rates are twice those above. For all others, the applicable tax rates are three times those above.[8]

France

France imposes an inheritance tax and a gift tax. The tax applies to worldwide transfers of assets by residents and to assets located in France when transferred by nonresidents.

The first F300,000 ($54,407) is exempt from tax for transfers to a spouse, children, or parents. The first F10,000 ($1,814) is exempt from tax for transfers to others. Up to F300,000 of gifts made with a ten-year period by a parent to children are exempt from tax.

For taxable transfers there are four different tax rate schedules: spouses, parents and children; siblings; other relatives up to fourth degree removed; and other persons. For spouses, parents, and children, marginal tax rates begin at five percent on the first F50,000 ($9,068) of taxable transfers and rise to 40 percent on taxable transfers in excess of F11,200,000 ($2,031,193). For siblings, marginal tax rates begin at 35 percent on the first F150,000 ($27,203) of taxable transfers and are 45 percent thereafter. For other relatives, the marginal tax rate is 55 percent on all taxable transfers. For other persons, the marginal tax rate is 60 percent on all taxable transfers.

Certain survivor annuities for a spouse or direct descendant and certain life insurance proceeds are exempt from tax.

Germany

Germany imposes an inheritance tax and a gift tax. Residents are liable for tax on all property received. Non-residents are liable for tax on assets located in Germany, but only if either the donor or donee is a German resident.

The spouse is exempt from tax on the first DM250,000 ($154,991) received by gift or the first DM500,000 ($309,981) received by bequest. Children and orphaned grandchildren are exempt on the first DM90,000 ($55,797) received. Other descendants are exempt on the first DM50,000 ($30,998) received. Other close relatives are exempt on the first DM10,000 ($6,200) received. All others are exempt on the first DM3,000 ($1,860) received. Additional allowances are provided for bequests to minor children.

For taxable transfers these are four different tax rate schedules: spouse and children; grandchildren; siblings and parents; and all others. For spouses and children, marginal tax rates begin at three percent on the first DM50,000 ($30,998) of taxable transfers and rise to 35 percent on taxable transfers in excess of DM100 million ($62 million). The marginal tax rate schedule for grandchildren begins at six percent on the first DM50,000 of taxable transfers and rises to 50 percent on taxable transfers in excess of DM100 million. For siblings and parents, the marginal tax rate schedule begins at 11 percent on the first DM50,000 of taxable transfers and rises to 65 percent on taxable transfers in excess of DM100 million. For others, the marginal tax rate schedule begins at 20 percent on the

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[8] Municipalities also may apply inheritance and gift taxes on transfers to persons other than a spouse or descendant to the transferor.

first DM50,000 of taxable transfers and rises to 70 percent on taxable transfers in excess of DM100 million.

Most household effects, jewelry, cars, and boats are exempt from the inheritance and gift tax bases.

Greece

Greece imposes an inheritance tax and a gift tax. In the case of a Greek citizen, regardless of where he is domiciled, the tax applies to all property in Greece and movable property located outside Greece. For non-citizen residents of Greece, the tax applies to all movable property.

There are four different categories of heirs or transferees: parents, spouse, and children; lineal ascendant other than parents, lineal descendants other than children, siblings and their descendants, and certain illegitimate children; in-laws and foster parents; and all others. The first Dr1.5 to 20 million ($6,214 to $82,850) of transfers to a spouse and child is exempt from tax depending upon the number and age of the children. The first Dr.1.1 million ($4,557) of transfers to lineal ascendant, lineal descendant other than a child, sibling, descendant of a sibling, or illegitimate child is exempt from tax. The first Dr500,000 ($2,071) of transfers to an in-law or foster parent is exempt from tax. The first Dr300,000 ($1,243) of any other transfer is exempt from tax. For purposes of the exemptions and tax rates there is lifetime integration of gifts and inheritances. However, lifetime gifts from a parent to a child are taxed at half the ordinary rates for gifts up to Dr12million ($49,710). In addition, marriage dowries are taxed at half the ordinary rates and provided a larger exemption.

For the first category of heirs, marginal tax rates begin at five percent on the first Dr3.5 million ($14,499) of taxable transfers and rise to 25 percent on taxable transfers in excess of Dr20million ($82,850). For the second category of heirs, marginal tax rates begin at ten percent on the first Dr3.5 million and rise to 35 percent on taxable transfers in excess of Dr20 million. For the third category of heirs, marginal tax rates begin at 20 percent on the first Dr3.5 million and rise to 50 percent for taxable transfers in excess of Dr20 million. For the fourth category of heirs, marginal tax rates begin at 20 percent on the first Dr3.5 million and rise to 50 percent on taxable transfers in excess of Dr5 million ($20,173).

Iceland

Iceland imposes an inheritance tax and taxes gifts as income to the donee. There are three classes of heirs for purposes of the inheritance tax: next of kin; parents and children; and all others. Marginal tax rates on bequests to next of kin begin at one percent and rise to ten percent. Marginal tax rates on bequests to parents and children begin at one percent and rise to 25 percent. Marginal tax rates on all other bequests begin at one percent and rise to 45 percent.[9]

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[9] In its initial survey, the Joint Committee staff was unable to find any information on exemption amounts or inheritance tax bracket breakpoints.

Ireland

Ireland imposes an inheritance tax and a gift tax. Tax is imposed on all transferred property if the donor is domiciled in Ireland. In other cases the tax applies only to transfers of Irish property.

All inheritances received by a surviving spouse are exempt from tax. The first Ir£171,500 ($257,895) of lifetime transfers to a spouse during the donor's lifetime are exempt from gift tax. Children, and in certain cases grandchildren and nieces or nephews, are exempt on the first Ir£171,500 of inheritances. For certain other relatives (lineal ancestors, lineal descendants, and siblings) the exemption is Ir£22,900 ($34,436) and for others the exempt amount of inheritance is Ir£11,450 ($17,218).

For inheritances received by any class of heir, the first Ir£10,000 ($15,038) of taxable inheritance is taxed at a marginal tax rate of 20 percent. For inheritances in excess of Ir£271,750 ($408,647) in the case of a child, Ir£122,900 ($184,812) in case of other lineal descendant, lineal ascendent, or sibling, or Ir£111,450 ($167,594) in the case of the other heirs, the marginal tax rate is 40 percent. The gift tax rates are three quarters of the inheritance tax marginal tax rates.

Certain insurance policies are exempt from inheritance taxes. Government securities and certain stocks received by foreign persons also are exempt. The first Ir£500 ($752) received per year per donee per donor is exempt from gift tax.

Italy

Italy imposes both an estate tax, an inheritance tax, and a gift tax. These taxes apply to all transfers by residents and to transfers of Italian property by nonresidents. The spouse and direct descendants of the decedent are exempt from the inheritance tax, though not from the estate tax. The amount of estate tax paid is deducted from inheritances prior to calculation of inheritance tax liability.

The first 250 million lire ($156,152) is exempt from the estate tax. The first 100 million lire ($62,461) of a taxable estate is taxed at a three percent marginal tax rate. The marginal estate tax rate rise to 27 percent on taxable estates in excess of 3 billion lire ($1.873 million).

The inheritance tax is imposed on three classes of individuals: siblings and their directly descending kin; other relatives up to fourth cousins or their kin up to third cousins; and unrelated persons. For the first class of heirs, marginal tax rates range from three percent on inheritances between 100 million and 250 million lire to 25 percent on inheritances in excess of 3 billion lire. For the second class of heirs, marginal tax rates range from three percent on inheritances between 10 million ($6,246) and 100 million lire to 27 percent on inheritances in excess of 3 billion lire. For the third class of heirs, marginal tax rates range from 6 percent on inheritances between 10 million and 100 million lire to 33 percent on inheritances in excess of 3 billion lire.

The tax base of the inheritance tax is increased by 10 percent as a proxy for jewelry, furniture, and cash transferred.

Japan

Japan imposes an inheritance tax and a gift tax. An individual who acquires property by inheritance, bequest, or gift and is domiciled in Japan, or a Japanese national temporarily traveling or residing abroad, is responsible for any tax liability on worldwide property received. An individual not domiciled in Japan is liable for taxes only relating to assets received that are located in Japan.

The Japanese inheritance tax relies on the concept of "statutory heir." Generally, the statutory heirs are the children and spouse if surviving, with grandchildren substituting for pre-deceased children. If there are no such surviving lineal descendants, lineal ascendant or lateral relations are designated statutory heirs. The total number of statutory heirs determines the size of the basic exemption.

While a will may designate the distribution of property, the total tax liability of all transferred property is determined by determining the tax liability that would arise if the property were distributed according to what are referred to as "statutory shares." In the simple case, statutory shares would bequeath one-half of the decedent's estate to the surviving spouse and the remaining half divided pro rata among children of the decedent.

A bequest of up to ¥40 million ($392,927) plus ¥8 million ($78,585) times the number of statutory heirs is exempt from tax. For bequests in excess of this amount, marginal tax rates begin at 10 percent on the first ¥7 million ($68,762) and rise to 70 percent for bequests that exceed the exempt amount by ¥1 billion ($9.823 million) or more. Unrelated beneficiaries pay an additional 20 percent surcharge. If the surviving spouse inherits less than ¥80 million ($785,855) or less than the statutory share, regardless of size, a deduction eliminates all tax liability. Under age and handicapped children also receive additional credits against any tax liability.

The gift tax permits an annual allowance of ¥600,000 ($5,895). Beyond that exemption, gifts are taxed at marginal tax rates of 10 percent of the first ¥1.5 million ($14,735) of taxable gifts to 70 percent on taxable gifts in excess of ¥100 million ($982,318).

Korea

Korea imposes an inheritance tax and a gift tax. The taxes are imposed on the transfer of worldwide property for individuals domiciled in Korea. For nonresidents, the taxes apply to transfers of property located in Korea.

The first W60 million ($74,543) of any inheritance is exempt from tax. In addition, a surviving spouse may exempt an additional W100 million ($124,239), surviving children under age 20 may exempt an additional W3 million ($3,727), and persons who are over age 60 or handicapped may exempt an additional W30 million ($37,272). For gifts, W100,000 ($124) is exempt for tax annually. This exemption is increased to W1.5 million ($1,864) for gifts between relatives. However, this annual exemption is limited to W15 million ($18,636) per donor over any five-year period for gifts to donees who are direct ascendants or descendants of the donor. In the case where a donee is the spouse of the donor, the W15 million five-year limit is increased by W1.0 million ($1,243) for each year of marriage. The five-year limitation is W5 million ($6,212) when the donor is a relative of the donee other than a spouse, direct descendant, or direct ascendant.

The inheritance tax and gift tax have separate tax rate schedules. The inheritance tax imposes a marginal tax rate of 10 percent on the first W20 million ($24,848) of taxable transfers and rises to a marginal tax rate of 55 percent on taxable transfers in excess of W1.0 billion ($1.242 million). The gift tax imposes a marginal tax rate of 15 percent on the first W10 million ($12,424) of taxable transfers and rises to a marginal tax rate of 60 percent on taxable transfers in excess of W500 million ($621,195).

A 10-percent discount on the inheritance tax liability is allowed for payment of the tax liability within a prescribed period.

Luxembourg

Luxembourg imposes an inheritance tax and a gift tax. The tax applies to residents, generally on all property of the deceased except for certain foreign property. For nonresidents, the tax applies only to certain immovable property in Luxembourg. The gift tax applies to all gifts of immovable property located in Luxembourg and to movable property represented by registered instruments.

Heirs in direct line of succession[10] and spouses in the case of a marriage producing children are exempt from the inheritance tax. The first LF1.5 million ($45,126) received by a childless spouse is exempt from inheritance tax. All other inheritances are taxable beyond a LF50,000 ($1,504) exemption.

For taxable transfer there are five different marginal tax rate schedules: childless spouse; siblings; aunts, uncles, nieces, and nephews; great uncles, great nieces, and great nephews, and all others. A childless spouse is taxed at a marginal tax rate of five percent on the first LF400,000 ($12,034) of taxable inheritances and at a marginal tax rate of up to 7.2 percent on inheritances in excess of LF70 million ($2.106 million). Inheritances of siblings are taxed at marginal tax rates beginning at 6 on the first LF400,000 of taxable transfers and rising to 17.2 percent on taxable transfers in excess of LF70 million.[11] Inheritances of aunts and uncles, nieces and nephews are taxed at marginal tax rates beginning at nine percent on the first LF400,000 of taxable transfers and rising to 17.2 percent on taxable transfers in excess of LF70 million. Inheritance of great uncles, great aunts, great nephews, great nieces are taxed at rates beginning at 10 percent on the first LF400,000 of taxable transfers and rising to 17.2 percent on taxable transfers in excess of LF70 million. Inheritance of others are taxed at marginal tax rates beginning 15 percent on the first LF400,000 of taxable transfers and rising to 17.2 percent on taxable transfers in excess of LF70 million. Inheritances received by non-profit organizations are taxed at marginal tax rates between 4 and 8.2 percent.[12]

The gift tax applies at different rates on different donees. Gifts received by children of the donor are taxed at the lowest rate, 1.8 percent, while gifts to the spouse are taxed at 4.8 percent. The gift

[10] Heirs in direct line of succession may be taxable at marginal tax rates of up to 7.2 percent on inheritances that exceed their legally specified share.

[11] The top rate applies to inheritances in excess of LF70million.

[12] Where the deceased was non-resident, marginal tax rates on spouses with children range from 5 to 7.2 percent. Direct descendants are taxed at marginal tax rates of two to 4.2 percent.

tax rate for gifts received by siblings is 6 percent; by aunts, uncles, nieces, and nephews, 8.4 percent; by great aunts, great uncles, great nieces, and great nephews 9.6 percent; by others, 14.4 percent. Non-profit organizations also are liable for gift tax at rates of 4.8 or 7.2 percent.

Mexico

Mexico no longer has Federal or State taxes on inheritances, gifts or donations. However, there is a title transfer tax of between 1.725 and 4.6 percent on transfers of real estate through inheritance, gifts, or donation. There also are stamp taxes assessed at between two and eight percent of value on gifts of real property. In addition, gifts to nonresidents are taxed at a flat 20-percent rate.

The Netherlands

The Netherlands imposes an inheritance tax and a gift tax. The tax applies to all transfers made by residents and to transfers of certain Dutch property by nonresidents.

For transfers between spouses, the first 522,791 Dutch guilders ($289,154) are exempt from tax. For transfers to children, the first 7,498 Dutch guilders ($4,147) per year are exempt from tax.[13] On inheritances received by lineal ascendant or siblings of the transferor, the first 79,997 Dutch guilders ($44,246) are exempt from tax.

For taxable transfers there are three different marginal tax rate schedules: spouse and children; siblings and lineal ascendants; and all others. For children and spouses, the rate of tax rises from five percent on the first 37,349 Dutch guilders ($20,658) of taxable transfers to 27 percent on taxable transfers in excess of 1,493,692 Dutch guilders ($826,157).[14] For siblings and lineal ascendant, the rates range from 26 percent for the first 37,349 Dutch guilders of taxable transfers to 53 percent on taxable transfers in excess of 1,493,692 Dutch gilders. For transfers to others, the marginal tax rates range from 41 percent for the first 37,349 Dutch guilders of taxable transfers to 68 percent on taxable transfers in excess of 1,493,692 Dutch guilders. In addition, gifts to charities in excess of 13,000 Dutch guilders ($7,190) are subject to an 11 percent tax.[15]

New Zealand

New Zealand imposes estate and gift taxes. The taxes apply to all transfers by persons domiciled in New Zealand and, in the case of transferors not domiciled in New Zealand, to property located in the country.

The estate and gift taxes have a unified tax rate schedule and the first NZ$27,000 ($15,957) is exempt from tax. The next NZ$9,000 ($5,319) is taxed at a marginal tax rate of 5 percent. Marginal tax rates increase to 25 percent for transfers in excess of NZ$72,000 ($42,553).

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[13] This annual amount may be increased once in each child's lifetime for children between 18 and 35 years of age to 37,343 Dutch guilders ($20,654).

[14] The same rate structure applies to lineal descendants. However, the rate is increased by 60 percent for descendants twice and further removed.

[15] The exempt amounts and tax brackets are indexed for increases in consumer prices. The amounts reported above are the exempt amounts and brackets in effect on January 1, 1994.

Certain property such as a personal residence and personal chattels passing to a surviving spouse and certain pension benefits are exempt from the estate tax. There is a NZ$2,000 ($1,182) annual gift tax exemption per donor per donee.

Norway

Norway imposes an inheritance tax and a gift tax. All transfers by residents are subject to the taxes. Transfers by nonresidents of immovable property located in Norway also are subject to the taxes.

Interspousal transfers are exempt from tax. For transfers to all others, the first Nkr100,000 ($14,269) is exempt from tax.

There are two classes of transferee: children and parents, and all others, including charities. The first Nkr300,000 ($42,808) of taxable transfers are taxed at a marginal tax rate of eight percent for children and parents and at 10 percent for all others. For taxable transfers in excess of Nkr300,000 a marginal tax rate of 20 percent is imposed on children and parents and a marginal tax rate of 30 percent is imposed on all others. There is a supplemental inheritance tax levied on heirs with private wealth of Nkr50,000 ($7,135) or greater. These supplemental rates begin at two percent and rise to 15 percent for heirs who already possess private wealth in excess of Nkr500,000 ($71,347).

The Philippines

The Philippines imposes an estate tax and a gift tax. The first 200,000 Philippine pesos ($7,633)[16] of the estate are exempt from tax. The marginal estate tax rates begin at five percent on the first 300,000 Philippine pesos ($11,450) of a taxable estate and rise to 35 percent for taxable estates in excess of 9.8 million Philippine pesos ($374,032).

The Philippine gift tax distinguishes between gifts to siblings, ancestors, spouses, descendants, and collateral relatives to the fourth degree and all other donees. The first 50,000 Philippine pesos ($1,908) of gifts per donee of any type are exempt from the gift tax annually. For gifts to the designated class of relatives, the marginal gift tax rates begin at 1.5 percent on the first 50,000 Philippine pesos of taxable gifts and rise to 20 percent for taxable gifts in excess of 4.8 million Philippine pesos ($183,199). Gifts to all other persons are taxed at a flat 10-percent rate after the 50,000 Philippine peso exemption.

Portugal

Portugal imposes an inheritance tax and a gift tax. The tax applies to both residents and nonresidents on assets situated in Portugal.[17]

The first Esc700,000 ($4,242) transfers are exempt from tax. In addition, Esc200,000 ($1,212) of shares transferred to each heir are exempt from tax. There is lifetime aggregation of gifts for purpose of the gift tax.

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[16] Philippine pesos converted to U.S. dollars using the exchange rate prevailing on September 30, 1994.

[17] Debt is considered located in Portugal if the creditor is located in Portugal.

For taxable transfers there are five different tax rate schedules: minor and incapacitated children; spouse and descendants; ascendant and siblings; uncles, aunts, nephews, and nieces; and all others. For minor and incapacitated children, marginal tax rates begin at 4.6 percent on the first Esc2.05 million ($12,424) of taxable transfers and rise to 26.45 percent on taxable transfers in excess of Esc67.8 million ($410,909). For spouses and descendants, marginal tax rates begin at 6.9 percent on the first Esc 2.05 million of taxable transfers and rise to 28.75 percent on taxable transfers in excess of Esc67.8 million. For ascendant and siblings, marginal tax rates begin at 11.5 percent on the first Esc2.05 million of taxable transfers and rises to 36.8 percent on taxable transfers in excess of Esc67.8 million. For uncles, aunts, nephews, and nieces, marginal tax rates begin at 19.55 percent on the first Esc2.05 million of taxable transfers and rises to 51.75 percent on taxable transfers in excess of Esc67.8 million. For all other transfers, marginal tax rates begin at 23 percent on the first Esc2.05 million and rises to 57.5 percent on taxable transfers in excess of Esc 67.8 million.

Life insurance and pension assets are exempt from the transfer taxes. Real estate is valued at a capitalized value of its current rental income. To account for certain personal property if not specifically valued (e.g., household furnishings) the value of the estate is increased by a rate that increases at marginal rates that rise from three percent for estates initially valued at Esc500,000 ($3,030) or less to 15 percent for estates valued in excess of Esc10 million ($60,606).

Singapore

Singapore imposes an estate tax, but no gift tax. The tax applies to all property in the estate of an individual domiciled in Singapore at the time of his death. Non-resident decedents are subject to the tax on any real or personal property situated in Singapore at the time of death.

The first S$500,000 ($327,439) of all property is exempt from the estate tax. In addition, the first S$3 million ($1.965 million) of residential property and the first S$500,000 of the decedent's interest in the Central Provident Fund or any designated pension or provident fund is excluded from the estate. Certain other investments also are excluded from the taxable estate.

The first S$10 million ($6.549 million) of the taxable estate is taxable at a five percent rate. Amounts in excess of S$10 million are taxed 10 percent.

Spain

Spain imposes an inheritance tax and a gift tax. The taxes apply to all transfers by residents and to transfers of assets located in Spain of nonresidents.

The Spanish inheritance and gift tax exempts the first Ptas2,386,000 ($17,940) from tax for spouses and direct or adopted descendants. Siblings, uncles, aunts, nephews, nieces, and ascendant and descendants by marriage are exempt on the first Ptas1,193,000 ($8,970) of transfers. In addition, a disabled person is exempt on an additional Ptas7,158,000 ($53,820) of transfers and transferees between the ages of 13 and 21 are exempt on an additional Ptas596,000 ($4,481) for each year over 13. Any gifts within a three-year period are aggregated for purpose of the exemption and computation of gift tax liability.

Aside from the exemption amounts there are not different tax rate schedules for different categories of heirs. Marginal tax rates begin at 7.65 percent on the first Ptas1,193,000 ($8,970) of taxable transfers and rise to 34 percent on taxable transfers in excess of Ptas119,250,000 ($896,617). In addition, a net worth surcharge is applied to the transferee's tax liability which varies by category of heir and level of the heirs' wealth. The marginal rate of the surcharge can be as high as 140 percent for transferees who are distant relatives and whose net wealth exceeds Ptas600 million ($4.5 million). For spouses and descendants, the marginal rate of the surcharge reaches 100 percent for transferees whose net wealth exceeds Ptas600 million.

To account for certain personal property if not specifically valued (e.g., household furnishings), the value of the estate is increased by three percent for estates less than Ptas20 million ($150,376) and by five percent for larger estates.

Sweden

Sweden imposes an inheritance tax and a gift tax. The tax applies to all property transferred by deceased Swedish citizens and resident foreigners, and to certain property left in Sweden by nonresident foreign citizens.

There are three classes of taxpayers. Class I consists of spouses, lineal descendants, spouse of child, surviving spouse of a deceased child, step-child, adopted child or foster child, and their descendants. Class II consists of all other individual transferees. Class III consists of churches and Swedish institutions devoted to the public benefit.

The first Skr280,000 ($36,477) of inheritance received by a spouse is exempt from tax. For other class I beneficiaries, the exemption is Skr70,000 ($9,119). For lineal descendants under age 18, the exempt amount is increased by Skr10,000 ($1,303) for each year the beneficiary is under age 18. For inheritances taxable under class II or class III, the first Skr21,000 ($2,736) is exempt. Gifts are exempt up to Skr2,000 ($261) per donor per year.[18]

For class I beneficiaries, marginal tax rates begin at 10 percent on the first Skr300,000 ($39,083) of taxable transfers and rise to 30 percent on taxable transfers in excess of Skr600,000 ($78,166). For class II beneficiaries, marginal tax rates begin at 10 percent on the first Skr70,000 of taxable transfers and rise to 30 percent on taxable transfers in excess of Skr140,000 ($18,239). For class III beneficiaries, marginal tax rates begin at 10 percent of the first Skr90,000 ($11,725) of taxable transfers and rise to 30 percent on taxable transfers in excess of Skr170,000 ($22,147).

Switzerland

There is no taxation of transfers of property at death or by gift at the national level, but every canton save one imposes an estate or inheritance tax and two cantons impose both. All cantons save

[18] A higher limit Skr10,000 applies for birthday and wedding gifts.

two impose a gift tax. In addition, in some cantons the communes have the right to collect a surcharge on the cantonal tax. Such taxes generally apply to all transfers by residents and to transfers of immovable property located in Switzerland by nonresidents.

The following information describes the inheritance tax applicable for Zurich. All transfers to a spouse are exempt. The first SF30,000 ($22,124) of transfers to direct descendants is exempt (SF40,000 ($29,499) if a minor child or handicapped individual). The first SF5,000 ($3,687) of transfers to others is exempt.

In Zurich, for taxable transfers there are six different tax rate schedules: direct descendants; lineal ascendant; siblings; step children or step parents; uncles, aunts, and their descendants; and all others. For direct descendants, marginal tax rates begin at two percent on the first SF10,000 ($7,375) of taxable transfers and rise to six percent for taxable transfers in excess of SF500,000 ($368,732).[19] Tax rates for lineal ascendant are twice those of direct descendants. Tax rates for siblings are three times those of direct descendants. Tax rates for stepchildren and step-parents are four times those of direct descendants. Tax rates for uncles, aunts, and their descendants are five times those of direct descendants. Tax rates for all others are six times those of direct descendants.

Turkey

Turkey imposes an inheritance tax and a gift tax. The tax applies to transfers by Turkish nationals on their worldwide property. Nonresidents are liable for tax on transfers of Turkish assets.

The first TL5 million ($168) of inheritances are exempt to all heirs. A surviving spouse is exempt on the first TL10 million ($336), but only if there are surviving children. The first TL250,000 ($8.40) of gifts are exempt from tax annually.

For taxable transfers there are three different tax rate schedules: spouses, children, and parents; grandparents and siblings and their children; and all others. For spouses, children, and parents, marginal tax rates begin at three percent on the first TL200,000 ($6.71) of taxable transfers and rise to 20 percent on taxable transfers in excess of TL12 million ($403). For grandparents and siblings and their children, marginal tax rates begin at seven percent on the first TL200,000 of taxable transfers and rise to 30 percent on taxable transfers in excess of TL12 million. For all others, marginal tax rates begin at 10 percent on the first TL200,000 of taxable transfers and rise to 44 percent on taxable transfers in excess of TL12 million.

United Kingdom

The United Kingdom imposes an estate tax and a gift tax. All transfers of property by persons domiciled in the United Kingdom and transfers of property situated in the United Kingdom by persons not domiciled are subject to tax.

Transfers to a spouse are excluded from the taxable estate and exempt from gift tax. The first £150,000 ($231,125) is exempt from estate taxation. The first £3,000 ($4,622) of annual gifts is exempt

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[19] For taxable transfers between SF280,000 ($206,490) and SF500,000, the marginal tax rate is seven percent.

from gift taxation.[20] Beyond those exempt amounts, estates and gifts are taxed at a flat 40 percent tax rate.

Tax rates applied to transfers at death or by gift of agricultural property and certain industrial plant, machinery, and equipment are 55 percent of the regular rate (22 percent). The value of a sole proprietorship or partnership interest in a farm or business or controlling interest in nonpublic companies are included in the estate or gift tax base at one-half their fair market value. Thirty percent of the value of minority holdings in nonpublic companies is excluded from the value of an estate or gift. Except in the case of working farmers, the value of such reliefs is limited to £500,000 ($770,416).

[20] If unused, the 3,000 exemption may be carried forward for one year.

Appendix D:

Treasury Department Description of Administration Proposal—Tax Responsibilities of Americans Who Renounce Citizenship (As Submitted to the Congress on February 6, 1995)[1]

Current Law

Under current law, worldwide gains realized by U.S. citizens and resident aliens are subject to U.S. tax. Existing rules recognize that the United States has a tax interest in preventing tax avoidance through renunciation of citizenship. These rules continue to tax former U.S. citizens on U.S. source income for ten years following renunciation of citizenship if one of the principal purposes of the renunciation was to avoid U.S. income tax. A similar rule applies to aliens who cease to be residents.

Reasons for Change

Wealthy U.S. citizens and long-term residents sometimes abandon their U.S. citizenship or status as residents. Existing rules to prevent tax avoidance through expatriation have proven largely ineffective because departing taxpayers have found ways to restructure their activities to avoid those rules, and compliance with the rules is difficult to monitor. Consequently, existing measures need to be enhanced to ensure that gains generally accruing during the time a taxpayer was a citizen or long-term permanent resident will be subject to U.S. tax at the time the taxpayer abandons citizenship or residency.

Proposal

Existing rules would be expanded to provide that if a U.S. person expatriates on or after February 6, 1995, the person would be treated as having sold his or her assets at fair market value immediately prior to expatriation and gain or loss from such sale would be recognized and would be subject to U.S. income tax. A U.S. citizen would be considered to expatriate if the citizen renounces or abandons U.S. citizenship. A resident alien individual would be taxed under this proposal if the alien has been subject to U.S. tax as a lawful permanent resident of the United States in at least ten of the prior fifteen taxable years and then ceases to be subject to U.S. tax as a resident.

For this purpose, a taxpayer would be treated as owning those assets that would be included in the taxpayer's gross estate (determined as if the taxpayer's estate had been created on the date of expatriation) as well as, in certain cases, the taxpayer's interest in

[1] Reprinted from the *General Explanation of the Administration's Revenue Proposals*, published by the Treasury Department, February 1995.

assets held in certain trusts. Exceptions to the tax on expatriation would be made for most U.S. real property interests (because they remain subject to U.S. taxing jurisdiction) and interests in qualified retirement plans. An expatriating individual also would be entitled to exclude $600,000 of gain as determined under the proposal.

The IRS may allow a taxpayer to defer payment of the tax on expatriation with respect to interests in closely-held businesses. In those cases, the taxpayer would be required to provide collateral satisfactory to the IRS. Payment of tax could not be deferred for more than five years, and an interest charge would be imposed on the deferred tax.

Solely for purposes of determining gain or loss subject to the tax on expatriation, a resident alien individual would be permitted to elect to determine basis using the fair market value (instead of historical cost) of assets owned on the date when U.S. residence first began. If made, this election would apply to all of a taxpayer's property.

This proposal would replace existing income tax rules with respect to expatriations on or after February 6, 1995. Existing rules that apply to taxes other than income taxes would continue to apply.

Revenue Estimate (in billions of dollars)[2]

	Fiscal Years						
	1995	1996	1997	1998	1999	2000	Total
Tax responsibilities of Americans who renounce citizenship	0.1	0.2	0.3	0.4	0.5	0.7	2.2

[2] Source: U.S. Department of the Treasury.

Appendix E:

Estimating the Revenue Effects of Proposed Legislation to Impose Tax on Expatriation

In general

Estimating the revenue effects of proposed legislation to modify the tax treatment of U.S. citizens and long-term residents who relinquish their citizenship or residence ("expatriates") is inherently difficult, particularly in cases in which the decision to relinquish citizenship or residence is made, at least in part, for tax reasons. Depending upon the proposal, there may be both income and estate tax consequences to the act of relinquishing citizenship or residence. The consequences may be significantly affected by whether the assets of the citizen or resident are U.S. or foreign situs and by whether the assets are held in trust.

Under all of the proposals that have been reported, it is necessary to estimate the number of individuals who will expatriate under present law and to estimate the effect that expatriation will have on their level of tax payments to the United States. Under some proposals, it is necessary to estimate the number of citizens who expatriate for tax avoidance purposes. Under all of the proposals, it is necessary to estimate the behavioral effect that will occur as a result of the proposal. In addition, it is necessary under certain proposals to estimate the unrealized appreciation of assets held by potential expatriates.

The current levels of expatriation are well documented by the State Department. However, the current levels of expatriation for tax avoidance purposes cannot be determined with precision because it is impossible to infer taxpayers' intent in expatriating. Thus, the revenue estimates of the various proposals ultimately are based upon the best judgment of the Joint Committee staff about the anecdotal evidence that is available publicly and through tax return information obtained from the Internal Revenue Service, expatriation data obtained from the State Department, and other data and information available to the Joint Committee staff.

Calculating a baseline

Revenue estimates measure the anticipated changes in Federal receipts that result from proposed legislative changes to the Internal Revenue Code or related statutes. The reference point for a revenue estimate is the revenue baseline, which projects Federal receipts assuming that present law remains unchanged. Thus, in its simplest form, a revenue estimate measures projected Federal receipts under a proposed change in law minus the projected Federal receipts under present law. If this formula yields a negative result, the proposal is a revenue loser. If the formula yields a positive result, the proposal is a revenue raiser.

In order to determine the present-law baseline with respect to proposals to alter the tax treatment of expatriation, the Joint Committee staff received information from the State Department relating to the number of U.S. citizens who relinquish citizenship each year.

More difficult determinations that are relevant for calculating the baseline include the levels of income, unrealized appreciation of assets, location of assets (i.e., U.S. or foreign), the wealth of those who are expatriating under present law, the tax effects of expatriation, and the reasons for expatriation. Individuals may receive any of several tax benefits from expatriation, assuming they relocate to a low-tax environment. First, they remove some or all of their entrepreneurial and investment income from current U.S. taxation. Second, they are able to recognize some or all of their unrealized gains at relatively low cost. Third, they largely insulate themselves from U.S. estate tax liability.

Shortly after release of the Administration's Fiscal Year 1996 Budget, the Joint Committee staff received information from the staff of the Treasury Department concerning U.S. citizens or lawful permanent residents who had relinquished, or appeared to be in the process of relinquishing, citizenship or residence. This information was superseded by subsequent information provided by the Internal Revenue Service and the Treasury Department. The subsequent information provided by the Treasury Department contained tax liability information for individuals who had expatriated in 1993 or 1994 according to State Department information and whose names could be matched to the Internal Revenue Service Individual Income Tax Return Master File. Of the 697 individuals who expatriated in 1993, the Treasury Department was able to match 13 names to the Individual Income Tax Return Master File with tax liability information for certain of the years 1989–1992 covering 19 returns altogether. Of these 13 matched names, seven had tax liability in any year less than $10,000. The average annual total tax liability for these individuals combined, based on all years matched, was approximately $7.5 million. In the case of one of these, it appears that the individual may have voluntarily complied with section 877 in the year following expatriation, voluntarily paying taxes substantially in excess of the individual's tax liability for the years prior to expatriation. The information matched to those who had expatriated in 1994 showed a higher combined average annual total tax liability, $60.0 million, for all years matched. However, it is unclear how the information that was matched would relate to information for all individuals who had expatriated during the 1993-1994 period. In addition, the information relating to tax liability provides no information as to an individual's wealth and, to the extent only one or two years of tax liability is shown, may show no information as to what an expatriating individual's tax liability would be if the individual did not expatriate. The Joint Committee staff found the Treasury Department information useful, but not determinative, in analyzing the potential effect of any of the proposals on fiscal year budget receipts.

The Joint Committee staff received information about tax liabilities before and after expatriation for some individuals. These data suggest that expatriates continue to incur U.S. tax liability after expatriation. Only a small number of linked pre- and post-expatriation tax returns were received, and they only cover periods immediately after expatriation, but this limited data does suggest that the current withholding system prevents individuals from using "tax havens" to eliminate tax liabilities with respect to current income, such as dividends, attributable to assets left in the United States.

In addition, the Joint Committee staff asked the State Department to match names appearing on the Forbes 400 list of wealthiest people in the United States for the last 10 years with State Department data on individuals who had actually relinquished U.S. citizenship. The Forbes 400 list was utilized because it was the only information of which the Joint Committee staff was aware that provided a measure of the net wealth of individuals. In addition, several individuals listed in the Forbes 400 list have been identified publicly as having expatriated or being in the process of expatriating and the Joint Committee staff wanted to verify the extent to which the reported information was accurate. The extent to which the State Department was able to match names of expatriating individuals to the Forbes 400 list is contained in Appendix G.

A present-law baseline was formed by extrapolating available information on expatriation to fiscal years 1995-2005. This extrapolation included judgments about the representativeness of the tax information, the potential numbers of expatriates, and the application of present law. Expatriation is assumed to be cyclical, affected by numerous factors, and the number of potential expatriates is limited. In addition, potential erosion of U.S. estate tax liabilities was omitted from consideration because of the inherent difficulty in predicting mortality and estate tax consequences.

The published reports of expatriation allegedly for tax avoidance purposes that predated the Administration proposal, the Administration proposal itself, and the extent of reports (and in some cases solicitations) that ensued have altered the individual and institutional (e.g., State Department and IRS) awareness of expatriation, regardless of whether the Administration proposal or something similar is enacted. The Joint Committee staff made the assumption that such publicity has not altered the present-law baseline because it is not clear how the parties involved will react. Some potential expatriates may be wary of the personal and professional stigma that may be attached to expatriation given the greater publicity of the issue in recent months. Others may use the recent publicity as a road map to expatriation. The Joint Committee staff also assumed that the IRS would make no additional efforts to enforce present law with regard to expatriation.

Behavioral effects

One of the most significant elements of the estimates of revenue effects of modifications to the tax treatment of expatriation is the assumed effect of the proposal on taxpayer behavior. For those individuals who it is assumed would expatriate during the budget period under present law, there are two possible reactions to a modification to the tax treatment of expatriation.

First, the individual may decide not to expatriate and, therefore, would remain a U.S. citizen or resident. In this case, the individual would continue to pay U.S. income and estate (if applicable) taxes. In evaluating how many of the individuals who are assumed in the present-law baseline to be likely to expatriate during the budget period who would not do so as a result of the proposal, it was necessary to evaluate the tax consequences of remaining a U.S. citizen or resident relative to the tax consequences of expatriating. For example, because the Administration proposal would impose tax on unrealized gains of assets held upon expatriation, individuals with low-basis assets might be deterred from expatriating. Similarly, the potential double taxation that could occur as a result of the Administration proposal might deter an individual from expatriating.

Second, the individual may decide to expatriate in any event and pay whatever taxes are owed as a result of the expatriation. Individuals who will fall into this category would include those whose expatriation is for nontax purposes in the first place. Also, under the Administration proposal, individuals with high-basis assets might conclude that the cost of expatriation is small relative to the potential exposure to U.S. estate taxes. Some have suggested that the Administration proposal might encourage some individuals who had not previously considered expatriation to do so.

A factor that may also determine whether the decision to expatriate is made (and that might also affect the revenue consequences of any proposal) is the age of the individual and the likelihood of death occurring during the period shortly after expatriation. However, as indicated earlier, this element has not been incorporated into the estimates of the present-law baseline or of the effects of any of the proposals because of the inherent difficulty in predicting mortality, wealth, and the estate tax consequences for a particular group of individuals.

Potential macroeconomic effects

The estimates of proposals to alter the tax treatment of expatriation do not include any changes in aggregate macroeconomic variables such as domestic investment. This assumption is consistent with the macroeconomic baseline required to be used for estimating purposes by the Joint Committee staff. It also comports with the Joint Committee staff's judgment that a proposal like the Administration's affecting a relatively small number of individuals, regardless of their wealth, would not cause a noticeable change in the overall U.S. economy.

Estimates of the proposals

Administration proposal

The Joint Committee staff estimates that the Administration proposal would have the following effects on fiscal year budget receipts:

Fiscal Years

[Billions of Dollars]

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	95–05	96–00
Administration proposal	(1)	(1)	0.1	0.1	0.2	0.2	0.2	0.2	0.3	0.3	0.3	1.9	0.6

[1] Gain of less than $50 million.

These numbers differ from the estimates provided to the Congress during consideration of H.R. 831. In conjunction with preparation of this study, the Joint Committee staff acquired additional information on the number and tax status of recent expatriates. In addition, the Joint Committee staff learned more about the decision required of the heterogeneous pool of potential expatriates, under this and other proposals discussed in the study.

The Administration proposal would increase revenue by imposing a tax on appreciation which is effectively absent or delayed under present law. This tax is high enough to delay or deter some expatriation. Potential expatriates with sizable appreciation in self-created assets, such as businesses they started up, will find expatriation more costly under the Administration proposal. As a result, the entrepreneurial and investment income they generate on an ongoing basis will be subject to U.S. income tax. Some potential expatriates may adjust their economic activities to avoid the tax imposed under the Administration proposal, but this adjustment may be difficult to make, particularly for individuals who run their own businesses. In the longer term, four or five years after the proposal is enacted, individuals planning to expatriate at that time would have had enough of a warning to prepare properly for expatriation, so growth in revenue attributable to the Administration proposal drops off significantly. As under present law, the effect of the Administration proposal on estate tax receipts was excluded.

The Administration proposal also may cause some new and accelerated expatriation. Individuals with high-basis assets but no immediate concern about the U.S. estate tax may expatriate in response to the Administration's proposal. Some of these individuals will accelerate expatriation that would have occurred in any event under present law. Others who would not have expatriated under present law may expatriate because of the Administration proposal. Individuals falling into this latter group include those who would not expatriate under present law because with the passage of time they would find it difficult for various reasons to surrender citizenship or permanent residence, but the Administration proposal stimulates them to take advantage of a high-basis "window" to expatriate at a time that they are relatively unencumbered. Individuals in this category include individuals who have recently inherited wealth or who expect to inherit wealth in the near future and individuals who have recently sold their businesses in taxable transactions.

Individuals who expatriate in the budget window because of the Administration proposal precipitate two tax effects. The first effect is that these expatriates will be taxed on unrealized capital gain at the time of expatriation. The second effect includes several ways in which the U.S. tax base will be eroded by these expatriating individuals because: (1) they will be removing subsequent capital gain they would have realized under present law from the U.S. tax base; (2) they may qualify for reduced U.S. taxation on other income because of a tax treaty; and (3) they remove themselves from potential U.S. estate tax consequences. In the Joint Committee staff's ten-year estimate of the Administration proposal, these two countervailing effects, the tax on unrealized capital gain and the tax base erosion, largely cancel each other out. In the longer run,

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stimulated expatriation will reduce the revenue raised by the Administration proposal as the tax base erosion factor outweighs the revenue gain from the tax on capital gain at the time of expatriation.

Senate amendment to H.R. 831

The estimates of the revenue effects of the Senate amendment to H.R. 831 are as follows:

Fiscal Years

[Billions of Dollars]

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	95–05	96–00
Senate amendment ..	([1])	([1])	0.1	0.1	0.1	0.2	0.2	0.2	0.2	0.2	0.2	1.6	0.5

[1] Gain of less than $50 million.

The estimated revenue effects of the Senate amendment to H.R. 831 are lower than those for the Administration proposal to reflect the fact that the Senate amendment would not apply to long-term residents of the United States. In addition, the Senate amendment effective date would delay the effective date for payment of the tax to 90 days after the date of enactment. However, this lower revenue gain would be partially offset by the fact that the Senate amendment would, in certain circumstances, deem the loss of citizenship to occur at a date earlier than the Administration proposal, which would apply the tax on expatriation to more individuals and at an earlier date than would the Administration proposal.

Motion to recommit H.R. 1215 by Representative Gephardt

Representative Gephardt included a variation of the Administration proposal in a motion to recommit that was offered on the House floor in connection with the House consideration of H.R. 1215 (the "Tax Fairness and Deficit Reduction Act of 1995"). The estimated revenue effects of Representative Gephardt's expatriation proposal are as follows:

Fiscal Years

[Billions of Dollars]

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	95-05	96–00
Gephardt motion	([2])	−0.1	−0.1	−0.1	−0.1	−0.1	([2])	([1])	0.1	0.1	0.1	−0.3	−0.6

[1] Gain of less than $50 million.
[2] Loss of less than $50 million.

The principal difference between the Gephardt proposal and the Administration proposal was that the Gephardt expatriation proposal would have changed the effective date of the Administration proposal to October 1, 1996. This effective date change produces a window for relatively inexpensive expatriation not available under the Administration proposal. The Gephardt proposal was not adopted.

S. 700 (Senator Moynihan) and H.R. 1535 (Representative Gibbons)

The estimated effects of S. 700 and H.R. 1535 on Federal fiscal year budget receipts are as follows:

Fiscal Years

[Billions of Dollars]

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	95-05	96–00
S. 700 and H.R. 1535	(1)	(1)	(1)	(1)	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.8	0.2

[1] Gain of less than $50 million.

Under S. 700 and H.R. 1535, the expatriation tax would apply both to U.S. citizens who expatriate and to long-term U.S. residents who relinquish their residence. Thus, the estimated revenue gain takes into account the potential tax imposed on both groups. Under the bills, an expatriating individual could elect to continue to be taxed as a U.S. citizen, rather than being subject to the tax on expatriation. It is anticipated that individuals would only make this election if the effect would be to reduce the total taxes owed. Thus, the election is assumed to reduce the revenue gain that otherwise might be raised under the bills.

The bills would provide a basis step up with respect to assets held by a nonresident alien individual who becomes a citizen or resident of the United States. Thus, under the bills, the amount of gain on sale of such assets that would be subject to U.S. tax would be the gain during the period the individual was a citizen or resident of the United States. Because this treatment is more favorable to the taxpayer than the treatment accorded under present law (i.e., that all appreciation is subject to tax without regard to whether it accrued during the time of U.S. citizenship or residence), this provision produces a revenue loss relative to present law.

The bills provide an exception to the expatriation tax with respect to certain individuals who relinquish U.S. citizenship before the age of 18-1/2, which would also be expected to reduce the revenue gain relative to the Administration proposal.

The effective dates of S. 700 and H.R. 1535 are the same as the effective dates in the Senate amendment to H.R. 831; therefore, the bills have the potential to subject individuals to the expatriation tax at a time earlier than under the Administration proposal.

Appendix F:

Methodology of Joint Committee on Taxation Study

In accordance with the provisions of Public Law 104–7, signed by President Clinton on April 11, 1995, the staff of the Joint Committee on Taxation ("Joint Committee staff") was directed to undertake a study of various proposals to modify the tax treatment of expatriation. Among the issues that the Joint Committee staff was required to analyze as part of the study included the following:

(1) the effectiveness and enforceability of current law with respect to the tax treatment of expatriation;

(2) the current level of expatriation for tax avoidance purposes;

(3) any restrictions imposed by any constitutional requirement that the Federal income tax apply only to realized gains;

(4) the application of international human rights principles to taxation of expatriation;

(5) the possible effects of any such proposals on the free flow of capital into the United States;

(6) the impact of any such proposals on existing tax treaties and future treaty negotiations;

(7) the operation of any such proposals in the case of interests in trusts;

(8) the problems of potential double taxation in any such proposals;

(9) the impact of any such proposals on the trade policy objectives of the United States;

(10) the administrability of such proposals; and

(11) possible problems associated with existing law, including estate and gift tax provisions.

In order to address the issues that the Joint Committee staff was required by statute to study, the Joint Committee staff met with representatives of the Administration, including the Internal Revenue Service and the Treasury Department (on April 18, 1995), the State Department (on May 1, 1995), and the Immigration and Naturalization Service (on April 19, 1995). In addition, the Joint Committee staff sent letters to each of these organizations (Internal Revenue Service (April 4, April 7, May 5, and May 16, 1995), Treasury Department (April 7, May 5, and May 16, 1995), State Department (April 4, April 20, and April 25, 1995), and the Immigration and Naturalization Service (April 4, 1995). Responses to these letters were received as follows: Internal Revenue Service (April 26, May 12, May 23, and May 26, 1995), Treasury Department (May 2, May 12, and May 23, 1995), State Department (April 28, May 5 (draft), May 9 (final of May 5 letter), and May 17, 1995), and Immigration and Naturalization Service (May 31, 1995). Copies of the Joint Committee on Taxation letters and the responses received are contained in Appendix G, except that confidential taxpayer return information, the disclosure of which is prohibited by section 6103 of the Internal Revenue Code, has been redacted from the relevant letters. The Administration provided information and analysis that enabled the Joint Committee staff to evaluate the effectiveness and enforceability of present law, the current level of expatriation for tax avoidance purposes, the administrability of various proposals, the possible impact of any of the proposals on existing treaties or future treaty negotiations, potential double taxation problems, and possible problems under present law, such as with the estate and gift tax provisions. The State Department also assisted the Joint Committee staff in analyzing the human rights implications of any expatriation tax proposal.

The Treasury Department provided specific information relating to the basis for the Administration's estimate of the potential revenue effect of the Administration proposal, including information relating to the tax liability of certain individuals expatriating during 1993 and 1994. The Joint Committee staff reviewed this information and conducted further independent research to estimate the potential revenue effect of any expatriation tax proposal. In addition, the Joint Committee staff asked the State Department to determine whether any of the individuals listed in the Forbes 400 list of wealthiest U.S. citizens for the period 1984–1995 had expatriated. The results of the State Department's attempts to match the Forbes 400 list to its records of expatriations are found in Appendix G (response dated May 17, 1995).

The Joint Committee staff reviewed testimony presented to both the Oversight Subcommittee of the House Committee on Ways and Means and the Senate Committee on Finance in hearings on the various expatriation proposals, which addressed many of the issues required to be studied.

Over the 2-month period, the Joint Committee staff conducted over 15 separate meetings with Administration officials and private practitioners and spoke on numerous occasions with such officials and practitioners by telephone. The Joint Committee staff consulted extensively with practitioners who represent clients who (1) have expatriated, (2) are considering expatriating, or (3) have extensive ties (financial or other) outside the United States and who might consider expatriating. In particular, the Joint Committee staff consulted at length with a practitioner who is widely known as an expert in the potential tax consequences of expatriation as well as representatives of a number of major law firms, big-six accounting firms, and representatives of a number of bar associations. The Joint Committee staff met or otherwise consulted with practitioners representing individuals who are long-term U.S. residents who might be affected by certain of the proposals. The Joint Committee staff also corresponded in writing with practitioners in various countries (Germany, the Netherlands, the Philippines, France, Denmark, Norway, Finland, and Sweden) that impose tax on former citizens and residents with respect to the implementation of their countries' tax regimes. As a result of this review of the testimony and the discussions with private practitioners, the Joint Committee staff was able to analyze the extent to which citizens who may expatriate consider present-law section 877 an impediment, the various reasons that citizens are expatriating, what effects these practitioners anticipate any of the various expatriation proposals might have on the decision to expatriate, and the practical and technical problems that could be expected if any of the proposals are enacted. In addition, the Joint Committee staff spoke with a number of individuals who helped analyze the potential legal implications of imposing tax on expatriation and the potential for double taxation under any of the proposals.

The Joint Committee staff met with a group of economists with expertise in the potential trade implications of any proposal to impose tax on expatriation. The information provided by this group of economists enabled the Joint Committee staff to evaluate the potential effects of any expatriation proposal on the free flow of capital (including human capital) into the United States and the potential conflicts with the trade policy objectives of the United States.

The Joint Committee staff did extensive research with respect to the legal issues involved in the proposals to impose tax on expatriation. This research included a review of relevant case law and academic commentary. In addition, the Joint Committee staff did extensive research on the legislative history, case law, and administrative rulings with respect to the present-law expatriation tax provisions, researched relevant immigration and nationality law and Privacy Act restrictions, and reviewed hundreds of published articles and submissions by practitioners with respect to the proposals to change the tax treatment of expatriation. Finally, the Joint Committee staff investigated published reports of individuals who have been identified as recent expatriates.

The Law Library of the Library of Congress assisted the Joint Committee staff in researching the extent to which countries other than the United States impose tax on expatriation and immigration and in researching the tax laws of countries other than the United States with respect to estates, inheritances, and gifts.

A draft copy of the study was provided to the Treasury Department for their review and comment.

Appendix: G:

Correspondence With the Administration

The following materials contain copies of all letters sent to the Internal Revenue Service ("IRS"), Treasury Department, State Department, and Immigration and Naturalization Service ("INS") and responses received in connection with the Joint Committee on Taxation staff research for this study. Tax return information that is subject to the disclosure requirements of Code section 6103 has been redacted from the responses received from the IRS and Treasury Department. In the case of the May 17, 1995, response from the State Department, the information referenced to be contained in TAB 2 has been included in Appendix H in a form that eliminates some of the extraneous information contained in the State Department computer printout.

Correspondence Included in Appendix G—

Correspondence from JCT

1. Letter from JCT to IRS, April 4, 1995.
2. Letter from JCT to INS, April 4, 1995.
3. Letter from JCT to State Dept., April 4, 1995.
4. Letter from JCT to IRS and Treasury, April 7, 1995.
5. Letter from JCT to State Dept., April 20, 1995.
6. Letter from JCT Chairman and Vice Chairman to State Dept., April 25, 1995.
7. Letter from JCT to IRS and Treasury, May 5, 1995.
8. Letter from JCT to IRS and Treasury, May 16, 1995.

Correspondence to the JCT

1. Letter from State Dept., April 28, 1995.
2. Letter from IRS (reprint does not include sec. 6103 info), April 26, 1995.
3. Letter from Treasury, May 2, 1995.
4. Letter from State Dept., May 9, 1995.
5. Letter from Treasury, May 12, 1995
6. Letter from IRS (reprint does not include sec. 6103 info), May 12, 1995.
7. Letter from State Dept., May 17, 1995.
8. Letter from IRS, May 23, 1995
9. Letter from Treasury, May 23, 1995.
10. Letter from Treasury, Eric Toder (reprint does not include sec. 6103 info), May 23, 1995.
11. Letter from IRS (reprint does not include sec. 6103 info), May 26, 1995.
12. Letter from INS, May 31, 1995.

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON TAXATION,
Washington, DC, April 4, 1995.

Hand Delivery

The Hon. MARGARET MILNER RICHARDSON,
Commissioner of Internal Revenue,
Washington, DC 20224

DEAR COMMISSIONER RICHARDSON: The Self-Employed Health Insurance Act, passed by Congress as H.R. 831, directs the staff of the Joint Committee on Taxation to undertake a comprehensive study by June 1, 1995, of the issues raised by the President's proposal to impose a tax on U.S. citizens and certain U.S. residents who expatriate. As part of the study, we are required to examine the effectiveness and enforceability of current law with respect to the tax treatment of expatriation and the current level of expatriation of tax avoidance purposes. To fulfill this Congressional mandate, we request certain assistance from the Internal Revenue Service ("IRS"). The following is a preliminary list of issues with respect to which we require an immediate response from the IRS.

1. What are the problems with current law regarding the taxation of expatriates under Code sections 877, 7701(b)(10), 2107 and 2501(a)(3)? In a recent speech to the U.S.A. branch of the International Fiscal Association, you have indicated that the current rules have been ineffective "because departing taxpayers have restructured their activities to avoid these rules." Please elaborate on the types of structures that taxpayers use to avoid the taxes imposed under present law.

2. In general, what is the IRS doing to enforce current law with respect to the taxation of expatriates? What is the IRS's experience in monitoring compliance in this area? How many people are currently assigned to administer the compliance with these provisions? How many taxpayers have filed tax returns under section 877? Are there any pending taxpayer controversies involving the provisions (e.g., cases under audit or litigation)? What procedure does the IRS follow to identify the potential cases?

3. Has regulation project ever been established under section 877 since the enactment of the law in the Foreign Investors Tax Act in 1966. If so, for what reason was the regulation project closed without the issuance or regulations? If not why was no regulation project ever opened? In light of a lack of regulatory guidance, what standards are currently applied in determining whether a taxpayer has relinquished his citizenship for tax avoidance motives?

4. In a white paper issued jointly with Assistant Secretary Samuels in 1993, you acknowledged that the Administration is facing tax compliances challenges of a global economy.[1] The paper suggests that the Administration intends to expand its efforts to improve individual tax compliance in a global economy including, for example, simultaneous examinations of individuals by the United States and other taxing jurisdictions. Please indicate the IRS's experience to date in launching additional efforts in the enforcement of current provisions relating to taxation of expatriates. Please also illustrate to what extent the Administration has coordinated its enforcement efforts with our treaty partners.

5. We received a statement on March 17, 1995, from the Office of Assistance Commissioner (International) with respect to current IRS enforcement of section 877 (copy attached). We have the following questions regarding the statement:

a. The statement indicates that hard data on the number of U.S. citizens who renounce their citizenship for tax avoidance motive is not available. Yet, officials from the Department of Treasury have indicated that approximately two dozen very wealthy taxpayers with substantial unrealized gains would be subject to the pro-

[1] See *Tax Compliance in a Global Economy: Statement of Policy and Action Plan*, issued jointly by the Commissioner of Internal Revenue and the Assistant Secretary (Tax Policy) of the U.S. Department of the Treasury on December 17, 1993.

posed rules.[2] Please explain the rationale behind the estimate that 24 individuals would be subject to the proposed expatriation tax each year if there is no hard data on U.S. citizens who renounce their citizenship to avoid U.S. tax. Furthermore, the press package released by the Department of Treasury on February 6, 1995 describing the Administration's proposal states that "the proposal would *rarely* apply to an individual whose gross assets are less then $5 million." It is our understanding that the Administration believes that taxpayers with less than $5 million of gross assets generally may be exempt from the expatriation tax proposal because of the $600,000 exclusion of gain available under the proposal. Please indicate, based on the IRS's experience, what is the correlation between the level of a taxpayer's gross assets and the amount of unrealized appreciation that is inherent in such assets.

b. The statement mentions that there is no current provision that requires the Department of State to notify the IRS when a U.S. citizen relinquishes citizenship. Please explain the extent to which Department of State information on expatriates (e.g., names, social security numbers, and new nationalities) is available to the IRS. Please indicate what laws or Administration procedures, if any, may need to be modified to enhance IRS access to such information.

c. The statement states that inquires about current section 877 have indicated that "presence of the provision has acted as a deterrent for the wide use of expatriation as a means of tax avoidance." Please provide information with respect to the type of inquires that the IRS has received on section 877 and the area of the IRS that has received such inquires.

d. The statement refers to the fact that there is no indication on Form 1040 whether an individual taxpayer is a U.S. citizen or resident alien. Consequently, a taxpayer who is subject to U.S. income tax on his worldwide income in a year, but is taxable only on U.S. source income (due to a change in his status to a nonresident alien) in another year generally does not raise the IRS's suspicion that the individual may be subject to section 877. Thus, the statement implies that identification of those taxpayers who potentially may be subject to section 877 could be facilitated by including a question on Form 1040 asking whether the taxpayer is a U.S. citizen, and a question on form 1040NR regarding whether a taxpayer had relinquished his U.S. citizenship within the past 10 years. Please indicate the rationale for not including such questions on the appropriate forms under the authority granted by section 6011.

e. The statement suggests that the IRS has historically used other provisions, including the gift tax provisions of the Code (instead of section 877) to enforce the U.S. tax fisc. Please describe how the gift tax provisions have been effective in collecting revenue that is lost due to lack of enforcement under section 877. Please also explain the other Code provisions that have been used for the same purpose.

f. Please explain how the stop-filer program works and whether such a program has been used to identify taxpayers who potentially may be subject to the current law applicable to expatriates.

I recognize the possibility that some of the information that I have requested may be subject to section 6103. Accordingly, pursuant to Code section 6103(f)(2) and (f)(4)(A), I request access to the information I have requested above. Please indicate in any responses you prepare which portions (if any) of the response contain information subject to section 6103 restrictions. I have authorized all members of my staff to receive this information as my designated agents.

I would like to obtain this information as soon as possible. If some of the information is available earlier than other information, I would like to receive whatever information is available as soon as possible.

Due to the time-sensitive nature of the study, I also request a meeting with relevant individuals from the IRS within the next week to discuss the above issues. One of may staff will contact your office early this week to coordinate the meeting.

I appreciate your cooperation in this matter.

Sincerely,

KENNETH J. KIES,
Chief of Staff.

Enclosure

cc: The Honorable Leslie B. Samuels, Assistant Secretary (Tax Policy), U.S. Department of the Treasury. Joseph H. Gutentag, Esq., International Tax Counsel, U.S. Department of the Treasury.

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[2] See Statement of Leslie B. Samuels, Assistant Secretary (Tax Policy), Department of the Treasury, before the Subcommittee on Taxation and Internal Revenue Oversight, Committee on Finance, United States Senate, dated March 21, 1995.

REVISION OF TAX RULES ON EXPATRIATION

Current IRS Enforcement of Section 877

Under the current provisions of IRC Section 877, a U.S. Citizen who renounces his/her citizenship for the purposes of avoiding payment of U.S. tax on worldwide assets may continue to be assessed U.S. tax for a period of ten years after the his/her expatriation. Hard data on the number of citizens who have renounced their citizenship for this purpose is not available. There is also no current provision to have the Department of State notify the IRS whenever an expatriation occurs. Since the element of intent is involved, one cannot assume that all expatriations are for the purposes of avoiding U.S. tax.

Anecdotal information implies that this provision of the U.S. tax code has been applied in very few cases. Over the years, inquiries about the provision have indicated that the presence of the provision has acted as a deterrent for the wide use of expatriation as a means of tax avoidance. In addition, since the U.S. taxes on worldwide income for both citizens and resident aliens and citizenship is not an element on the Form 1040, a U.S. citizen who moves abroad, renounces his/her citizenship and then purports to now be a nonresident alien would not necessarily raise the suspicion that a Section 877 violation has occurred. IRS has historically used other provisions of the tax law, e.g., gift tax, in lieu of Section 877 in enforcing the code. Thus when an examination of a return, or a stop filer condition identifies a taxpayer who may be subject to this provision, experience has shown us that, in its present form, it is very difficult to identify, much less to prove, that an expatriation for avoidance of taxes was the intent.

Proposed Enforcement of the New Section 877 Provisions

The following are several of the steps that IRS proposes to use to enforce the new provisions of Section 877:

1. Require each citizen renouncing his/her citizenship to complete a form estimating the value of his/her assets at the time of expatriation.*
2. Require each expatriate who is subject to the tax to name a U.S. agent.
3. Require the Department of State to immediately notify IRS of all expatriates and provide a copy of the form listed in #1 above.
4. Upon receipt of the notification from State, research all available information to determine if the expatriate is subject to the tax.
5. For all those who are subject to the tax, immediately assign the case for the pre-filing review of the potential liability and identification of assets and their location.
6. In the case of any expatriate subject to the tax who fails to file the tentative tax within the required ninety days, a jeopardy assessment will be made and immediate enforcement actions to collect will be initiated.

*Note: Any necessary changes to Department of State/Immigration and Naturalization laws, regulations and/or procedures should be changed concurrently with enactment of this provision to ensure rapid, accurate and consistent enforcement of this provision by all Federal agencies.

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON TAXATION,
Washington, DC, April 4, 1995.

Hand Delivery
The Hon. DORIS M. MEISSNER,
Commissioner, Immigration and Naturalization Service,
Washington, DC 20001

DEAR MS. MEISSNER: The Self-Employed Health Insurance Act, passed by Congress as H.R. 831, directs the staff of the Joint Committee on Taxation to undertake a comprehensive study by June 1, 1995, of the issues raised by the President's proposal to impose a tax on U.S. citizens and certain U.S. residents who expatriate. As part of the study, we are required to examine the effectiveness and enforceability of current law with respect to the tax treatment of expatriation and the current level of expatriation for tax avoidance purposes. To fulfill this Congressional mandate, we request certain information from the Immigration and Naturalization Service ("INS") with respect to the ability of individuals to move into and out of the United States. The following is a preliminary list of issues with respect to which we require an immediate response from the INS:

1. A general description of the various types of visas available to individuals who wish to enter the United States, including eligibility criteria and the length of time that an individual may remain in the United States under each type of visa.
2. With regard to former U.S. citizens, information regarding the types of entry visas they may be eligible for, and the nature of any records that are kept of their movement into and out of the United States and/or the length of their stays.
3. Any circumstances under which an individual may enter the United States without an entry visa, the amount of time such individuals may remain in the United States, and the nature of any records that are kept with respect to such individuals.
4. The nature of any records that are kept with respect to the movement of lawful permanent residents (i.e., "green-card" holders) or other resident aliens into or out of the United States, the circumstances under which such status could be revoked or relinquished, and the procedures required for such revocation or relinquishment.

Due to the time-sensitive nature of the study, I also request a meeting with relevant individuals from the INS within the next week to discuss the above issues. One of my staff will contact your office in the next few days to coordinate the meeting.

I appreciate your cooperation in this matter.

Sincerely,

KENNETH J. KIES,
Chief of Staff.

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON TAXATION,
Washington, DC April 4, 1995.

Hand Delivery

The Hon. CONRAD K. HARPER,
Legal Adviser, Department of State,
Washington, DC 20520

DEAR MR. HARPER: The Self-Employed Health Insurance Act, passed by Congress as H.R. 831, directs the staff of the Joint Committee on Taxation to undertake a comprehensive study by June 1, 1995, of the issues raised by the President's proposal to impose a tax on U.S. citizens and certain U.S. residents who expatriate. As part of the study, we are required to examine the effectiveness and enforceability of current law with respect to the tax treatment of expatriation, the current level of expatriation for tax avoidance purposes, the administrability of expatriation tax proposals, and the application of international human rights principles to the taxation of expatriation. To fulfill this Congressional mandate, we request certain assistance from the State Department. The following is a preliminary list of issues with respect to which we require an immediate response from State:

1. How many individuals have relinquished their U.S. citizenship in each of the past 15 years, and for what reasons? Under what circumstances does the United States permit dual citizenship? What countries are known not to permit dual citizenship?

2. What are the procedural steps involved in the relinquishment of U.S. citizenship, both from the perspective of the State Department and from the perspective of the expatriating citizen? How do these procedures differ, and what is their legal effect, in the case of expatriation by a minor (or by one who was recently a minor)?

3. What records are kept in connection with the relinquishment of citizenship? To what extent is information from such records shared with the Internal Revenue Service (IRS)? Information relevant to the IRS may include the expatriate's name, social security number, reasons for expatriating, new nationality, new residence, and foreign tax status. What laws or procedures would need to be changed to enhance access to such information by the IRS?

4. To what extent could the State Department request or require an expatriating citizen to provide tax information as part of the process of expatriation? What limitations might apply to the type or scope of information provided, or to IRS access to such information?

5. Please feel free to share with us any further information or analysis on the issue of the application of international human rights principles to the taxation of expatriation, beyond the letters and memorandum submitted for the records of the hearings held last month by the oversight subcommittees of the Senate Committee on Finance and the House Committee on Ways and Means.

Due to the time-sensitive nature of the study, I also request a meeting with relevant individuals from the State Department within the next week to discuss the above issues. One of my staff will contact your office early this week to coordinate the meeting.

I appreciate your cooperation in this matter.

Sincerely,

KENNETH J. KIES,
Chief of Staff.

cc: Michael J. Matheson, Esq., Acting Legal Advisor.

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON TAXATION,
Washington, DC, April 7, 1995.

Hand Delivery

The Hon. MARGARET MILNER RICHARDSON,
Commissioner of Internal Revenue,
Washington, DC 20224

The Hon. LESLIE B. SAMUELS,
Assistant Secretary (Tax Policy), Department of the Treasury,
Washington, DC 20220

DEAR COMMISSIONER RICHARDSON AND ASSISTANT SECRETARY SAMUELS: As you are aware, the staff of the Joint Committee on Taxation has been directed to undertake a comprehensive study by June 1, 1995, of the issues raised by the President's proposal to impose a tax on U.S. citizens and certain U.S. residents who expatriate. As part of the study, we are required to examine the effectiveness and enforceability of current law with respect to the tax treatment of expatriation, and the administrability of the President's proposal. To fulfill this Congressional mandate, we request certain assistance from the Internal Revenue Service and the Department of Treasury. Specifically, we would like to obtain information on the following:

1. To what extent did the Treasury staff consult with the IRS staff on the subject of enforcement of the President's proposal prior to the public announcement of the proposal on February 6, 1995? What procedures would be undertaken to enforce the provisions in the President's proposal if that proposal were enacted? To the extent that problems exist in enforcing present law, is there reason to believe that the provisions set forth in the proposal would be more enforceable? Is it possible to adopt any of the anticipated enforcement procedures for the proposal to enhance the enforcement of the current law?

2. With respect to the trust provisions of the President's proposal in particular, how would these provisions be enforced? For example, under the proposal a beneficiary of a trust would be deemed to dispose of his interest in the trust and pay tax on the gain from the deemed sale. How does the Administration plan to collect tax from an expatriate who is an income beneficiary of a trust and who does not have the ability to liquidate the assets of the trust in order to pay the tax? How does the Administration plan to collect tax from an expatriate who is a remainder beneficiary of a trust and who similarly does not have the ability to liquidate the assets of the trust in order to pay the tax? In the case of a contingent beneficiary who ultimately receives no distribution from the trust, would he (or his estate) be entitled to a refund of a portion of the tax assessed upon his expatriation? Do the enforcement concerns with respect to the trust provisions differ from those with respect to the provisions generally imposing a tax on expatriating individuals? Do you anticipate that the trust provisions could be used to avoid application of the expatriation tax under the proposal?

3. How would your assessment of the enforceability issues set forth above change in light of the modifications the proposal made by the Senate amendment to H.R. 831, or in light of any other subsequent modifications to the proposal contemplated by the Administration?

4. There has been a significant amount of attention given to the cases of several high-profile individuals who have recently expatriated—for example, John Dorrance III. Kenneth Dart, Michael Dingman, Ted Arison, J. Mark Mobius, Frederick Krieble, and Jane Siebel-Kilnes. To what extent have the IRS or Treasury investigated the factual circumstances of these particular individuals? Have any steps been taken to enforce the present-law tax avoidance provisions with respect to these individuals? If not, why not? Are you aware of any other individuals who have recently expatriated with significant holdings of assets? Please provide us with any information you have regarding the individuals specified above, and any other similarly situated individuals.

I recognize the possibility that some of the information that I have requested may be subject to section 6103. Accordingly, pursuant to Code sections 6103(f)(2) and (f)(4)(A), I request access to the information I have requested above. Please indicate in any responses you prepare which portions (if any) of the response contain information subject to section 6103 restrictions. I have authorized all members of my staff to receive this information as my designated agents.

I would like to obtain this information as soon as possible. If some of the information is available earlier than other information, I would like to receive whatever information is available as soon as possible.

Due to the time-sensitive nature of the study, I also request a meeting with relevant individuals from the IRS and the Office of Tax Policy within the next week to discuss the above issues. One of my staff will contact your office shortly to coordinate the meeting.

This document is a Congressional record and is entrusted to the Treasury Department and the Internal Revenue Service for your use only. This document may not be disclosed without the prior approval of the Joint Committee on Taxation.

I appreciate your cooperation in this matter.

Sincerely,

KENNETH J. KIES,
Chief of Staff.

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON TAXATION,
Washington, DC.

Hand Delivery
The Hon. CONRAD K. HARPER,
Legal Adviser, Department of State,
Washington, DC 20520

DEAR MR. HARPER: As you are aware, the staff of the Joint Committee on Taxation has been directed to undertake a comprehensive study by June 1, 1995, of the issues raised by the President's proposal to impose a tax on U.S. citizens and certain U.S. residents who expatriate. In addition to the materials we requested from you on April 4, 1995, we would like to obtain some additional information:

1. The names and social security numbers of any individuals who have renounced their citizenship since January 1, 1995. Please include any individuals who have taken an oath of renunciation, signed a statement of voluntary relinquishment, indicated any intent to take such an oath or sign such a statement, or been issued a certificate of loss of nationality in 1995, and the dates on which any such action was taken.
2. The names and social security numbers of any individuals who renounced their citizenship in 1994. If possible, we would prefer to have this information on a computer diskette.
3. We have compiled a list of individuals included in the "Forbes 400" (denoting the 400 richest Americans) over the last ten years. We would like to know which, if any, of these individuals (or members of their families, to the extent such information can be ascertained) have renounced their United States citizenship in the past ten years.

Due to the time-sensitive nature of the study, we would like to obtain this information as soon as possible. I appreciate your cooperation in this matter.

Sincerely,

KENNETH J. KIES,
Chief of Staff.

Enclosure.

FORBES "400" LIST (FOR YEARS 1985–1994)

Name and Location

Abele, John E., Boston area.
Abraham, S. Daniel, West Palm Beach, Florida.
Abramson, Leonard, Blue Bell, Pa.
Ackerman, Peter, London.
Adams, Kenneth Stanley, Jr., Houston.
Albertson, Joseph Albert, Boise, Idaho.
Albertson, Kathryn McCurry, Boise, Idaho.
Albritton, Joe Lewis, Washington, D.C.; Houston, Texas.
Alexander, Norman E., Scarsdale, N.Y.
Alfond family, Dexter, Maine.
Alkek, Albert B., Victoria, Tex.
Allen, Charles, Jr., NYC.
Allen, Herbert Anthony, NYC
Allen, Paul Gardner, Mercer Island, Wash.
Alvin, Jr. (Tex),—.
Anderson, family, Bayport, Minnesota.
Anderson, John Edward, Bel Air, Calif.
Anderson, Robert Orville, Boswell, N.M.
Andreas, Dwayne Orville & son, Bal Harbour, Florida.
Annenberg family, NYC.
Annenberg, Walter Hubert, Wynnewood, Pa.; Calif.
Anschutz, Philip Frederick, Denver, Colorado.
Ansin, Edmund Newton, North Miami Fla.
Anthony, Barbara Cox, Honolulu.
Apperson, Jr.,—.
Appleton, Arthur Ivar, Chicago.
Argyros, George Leon, Newport Beach, Calif.
Arison Ted, Miami Beach.
Arnow, Robert H., NYC.
Arrillaga, John, Palo Alto, Calif.
Ashton, Alan C., Orem, Utah.
Autry, Orvon Gene, Los Angeles, California.
Avery, Alice O'Neill, Los Angeles.

Bacardi family, Puerto Rico, et al.
Bailmer, Steven Anthony, Bellevue, Washington.
Bainum, Stewart, Sr., Silver Spring, Md.
Ballmer, Steven Anthony, Bellevue, Washington.
Bancroft family, NYC.
Bancroft, Bettina, Los Angeles.
Bancroft, Christopher, Denton, Tex.
Bancroft, Hugh III, Newport Beach, Calif.
Baoudjakdi, Millicent V., Los Angeles.
Barbey family, Calif., et al.
Bass, Anne Hendricks, NYC.
Bass, Edward Perry, Fort Worth, Tex.
Bass, Lee Marshall, Fort Worth, Texas.
Bass, Perry Richardson, Fort Worth.
Bass, Robert Muse, Fort Worth.
Bass, Sid Richardson, Fort Worth, Tex.
Bastian, Bruce W., Orem, Utah.
Batten, Frank, Sr., Virginia Beach, Virginia.
Beal, Carlton, Virginia Beach.
Bean family, (Gorman), Freeport, Me.
Bechtel, Riley P., San Francisco, California.
Bechtel, Stephen Davison, Jr., San Francisco.
Bechtel, Stephen Davison, Sr., Oakland, Calif.
Beckerman, David A., Woodbridge, Connecticut.
Behring, Kenneth Eugene, Blackhawk, California.
Belfer, Arthur Bejer, Oakland.
Belk family, Charlotte, N.C.
Belz family, Memphis.
Benaroya, Jack A., Seattle.
Benenson, Charles Benjamin, NYC.
Bennett, William Gordon, Las Vegas.
Benson, Craig Robert, Rye, New Hampshire.

Berkley, William Robert, Greenwich, Conn.
Bernhard, Arnold, Westport, Conn.
Bernstein, Richard, NYC.
Berrie, Russell, Englewood, N.J.
Berry, Jack Monteith, Sr., Winter Haven, Fla.
Berry, John Williams, Sr., Dayton, Ohio.
Bettingen, Burton Green, Beverly Hills.
Bing family, Los Angeles, California.
Binger, Virginia McKnight, Wayzata, Minn.; Florida.
Bingham family, Louisville.
Blakeman,—.
Blank, Arthur, Atlanta, Georgia.
Blaustein, Morton K., Baltimore.
Blech, David, NYC.
Bloch, Henry W., Shawnee Mission, Kansas.
Block family, NYC area.
Block, Paul Jr., Toledo, Ohio.
Block, William, Pittsburgh, Pennsylvania.
Bloomberg, Michael Rubens, NYC.
Bluhm, Neil Gary, Winnetka, Ill.
Boesky, Ivan Frederick, NYC, Mt. Kisco, N.Y.
Borg, Malcolm Austin, Englewood and Spring Lake, N.J.
Bose, Amar, G., Wayland, Massachusetts.
Boudjakdji, Millicent V., Los Angeles, California.
Boyd, William Samuel, Las Vegas, Nevada.
Bredein, Octavia Mary du Pont, Greenville, Delaware.
Bredin, Octavia Mary du Pont, Greenville, Del.
Breed, Allen Kent, South Padre Island, Texas.
Bren, Donald Leroy, Newport Beach, Calif.
Brennan, Bernard F., Winnetka, Ill.
Bright, Harvey Roberts (Bum), Dallas.
Briscoe, Dolph, Jr., Uvalde, Tex.
Brittingham family, Dallas.
Broad, Eli, Los Angeles.
Bronfman, Edgar Miles, NYC.
Bronfman, Edgar Miles, Sr., NYC.
Brown family, Louisville.
Brown, Harold, Boston.
Brown, Jack Eugene, Midland, Tex.
Buck family, California, et al.
Buffett, Susan Thompson, Omaha; San Francisco.
Buffett, Warren Edward, Omaha.
Bullitt family, Seattle.
Bullitt, Dorothy Simson, Seattle.
Busch Family, St. Louis.
Busch, August Anheuser, Jr., St. Louis.
Butler, Sarah Turner, Columbus, Georgia.
Butt, Charles Clarence, San Antonio, Texas.
Buttner, Jean Bernhard, NYC.

Cabot family, Boston area.
Cafaro, William Michael, Hubbard, Ohio.
Cain, Gertrude Ramsay, Chicago.
Cain, Gordon A., Houston.
Campbell family, Hawaii et al.
Canton, Bernard Gerald, Beverly Hills, California.
Cantor, Bernard Gerald, Beverly Hills, NYC.
Cargill family, Minneapolis origin.
Cargill, James R., Minneapolis.
Cargill, Margaret, La Jolla, Calif.
Cargill/MacMillan families, Minneapolis, et al.
Carlson, Curtis LeRoy, Long Lake, Minn.
Carpenter, Ben H., Dallas.
Carpenter, Robert Ruliph, Jr., Montchanin, Del.
Carpenter, William Kemble, Boca Raton, Fla.
Carr, Oliver Taylor, Jr., Washington, D.C.
Carter family, Dallas area.
Carter, Donald, Coppell, Tex.

Caruth family, Dallas.
Caruth, William Walter, Jr., Dallas.
Carver family, Muscatine, Iowa.
Carver, Lucille, Muscatine, Iowa.
Catsimatidis, John Andreas, NYC.
Chambers, Anne Cox, Atlanta.
Chambers, Raymond George, Morristown, N.J.
Chandler family, Los Angeles, et al.
Chandler, Harrison Gray, Arcadia, Calif.
Chase, David Theodore, West Hartford, Conn.
Cahus family, NYC.
Christopher, Sr., NYC.
Clapp family, Seattle.
Clapp, Norton, Seattle.
Clark family, Cooperstown, N.Y.
Clark, Alfred James, Easton, Md.; Bethesda, Md.
Clark, Richard Wagstaff, Malibu and NYC.
Clayton, James Lee, Knoxville, Tenn.
Close family, Fort Mill, S.C.
Cohen family, NYC area.
Cohen, Arthur G., Kings Point, N.Y.
Cohen, Edward Baron, NYC; Southampton, N.Y.
Cohen, Sherman, NYC; Greenwich, Conn.
Cohn, Seymour, Palm Beach County, Fla.
Coker Family, Hartsville, S.C.
Colket, Tristam C., Jr., Paoli, Pa.
Collier family, Naples, Fla.
Collier, Miles Carnes, Naples, Fla.
Comer, Gary Campbell, Chicago.
Congel, Robert J., Fayetteville, N.Y.
Connell, Grover, Westfield, N.J.
Connelly, John E., Pittsburgh, Pennsylvania.
Conover, Catherine Mellon, Washington, D.C.; Idaho.
Cook, Jane Bancroft, Cohasset, Mass.
Cook, William Alfred, Bloomington, Ind.
Cooke, Jack Kent, Middleburg, Virginia.
Cooke, Phoebe Hearst, Woodside, Calif.
Coors family, Golden, Colo.
Copeland family, Delaware; Washington, D.C.
Copeland, Alvin, New Orleans.
Copeland, Gerret van Swearingen, Wilmington, Del.
Copeland, Lammot du Pont, Jr., Wilmington, Del.
Copeland, Pamela Cunningham, Greenville, Del.
Copley, Helen Kinney, La Jolla, Calif.
Corn, Elizabeth Turner, Columbus, Georgia.
Cosby, William Henry, Jr., Amherst, Mass.
Cotsen, Lloyd Edward, Bel Air, Calif.
Cottwald family, Richmond, Virginia.
Coulter, Joseph R., Miami Springs, Florida.
Coulter, Wallace Henry, Miami Springs, Florida.
Cowles (Gardner) family, Minneapolis; Des Moines.
Cowles (William) family, Spokane.
Cox, Edwin Lochridge, Dallas.
Cox, John Lee, Midland, Tex.
Cox, William Coburn, Jr., London; Nantucket, Mass.
Crain, Gertrude Ramsay, Chicago.
Crow, Fred Trammell, Dallas.
Crown, Henry, Chicago.
Crown, Lester (and family), Wilmette, Illinois.
Cullen family, Houston.
Culverhouse, Hugh Franklin, Tampa, Florida.
Cummings, Nathan, NYC.
Currier family, The Plains, Va.; NYC.
Currier, Andreas B., The Plains, Va.
Currier, Lavinia M., The Plains, Virginia.
Currier, Michael S., NYC.
Cushing, Roosevelt

Dabah, Morris, NYC.
Daniels, Robert William, Jr., Denver, Colorado.
Danner, Raymond L., Nashville.
Darden, Constance Simons du Pont, Norfolk, Va.
Dart, Robert, London, England.
Dart, William A., Sarasota, Florida.
Davenport, Elizabeth Lupton, Lookout Mountain.
Davidowitz, Joseph Morton, Lawrence, N.Y.
Davidson, William Morse, Bloomfield Hills, Michigan.
Davis family, Jacksonville, Fla.
Davis, Artemus Darius, Walden, Colorado.
Davis, James Elsworth, Jacksonville, Fla.
Davis, Kenneth William, Jr., Fort Worth.
Davis, Leonard, Palm Beach and NYC.
Davis, Marvin Harold, Beverly Hills.
Davis, Shelby Cullom, Tarrytown, N.Y.
Davis, Thomas Cullen, Fort Worth.
Davis, William Selden, Fort Worth.
Day, Robert Addison, Jr., NYC; Los Angeles.
Day, Willametta Keck, Reno, Nev.
Dayton family, Minneapolis.
Dayton, Alida Rockefeller, Minneapolis.
DeBartolo, Edward John, Boardman, Ohio.
DeVos, Richard Marvin, Ada, Mich.
Deak, Nicholas Louis, Scarsdale, N.Y.
Dedman, Robert Henry, Sr., Dallas.
Dell, Michael, Austin, Tex.
de Menil family, Houston, Tex.
de Menil, Dominique, Houston, Tex.
Demoulas family, Boston area.
Dempsey, John Cornelius, Delaware, Ohio.
Dennis, Richard James, Jr., Chicago.
de Young family, San Francisco, Calif. et al.
DiLorenzo family, NYC.
Dikeou family, Denver, Orlando, Fla.
Diller, Barry, Los Angeles, California.
Dillon family, Far Hills, New Jersey.
Dillon, Clarence Douglas, Far Hills, N.J.
Dinner, Richard, San Francisco.
Disney (Walt) family, NYC; Los Angeles, Calif., et al.
Disney, Lilliam Bounds, Los Angeles.
Disney, Roy Edward, Los Angeles.
Disney, (Walt) family, NYE; Los Angeles, Calif., et al.
Dittmer, Thomas Henry, Lake Forest, Ill.
Dixon, Fitz Eugene, Lafayette Hill, Pa.
Dixon, Suzanne Searle, Lake Forest, Ill.
Dolan, Charles Francis, Oyster Bay, N.Y.
Donaldson, Evelyn du Pont, Clark, Wyo.
Donnelley family, Chicago orig.
Dorrance, Bennett, Paradise Valley, Ariz.
Dorrance, John Thompson III, Devil's Tower, Wyo.
Dorrence, John Thompson, Jr., Gladwyne, Pa.
Doubleday, Nelson, Jr., Locust Valley, N.Y.
Draper, Irene Carpenter, Montchanin, Del.
Dreisezun, Sherman W., Kansas City, Mo.
Du Pont, Alexis Felix, Jr., Wilmington, Del.
Du Pont, Irenee, Jr., Montchanin, Del.
Du Pont, Willis Harrington, Palm Beach, Fla.
du Pont (Pierre Samuel) Wilmington, Del.
du Pont (Pierre Samuel II) Wilmington, Delaware et al.
du Pont (William) family, Wilmington, Del. et al.
du Pont family (Henry), Del. Pa., Conn.
du Pont family (Pierre Samuel II) Wilmington, Del., et al.
du Pont, Alexis Felix, Wilmington, Del.
du Pont, Edward Bradford, Wilmington, Del.
du Pont, Helena Allaire Crozer, Chesapeake City, Md.
du Pont, Henry Eleuthere Irenee, Wilmington, Del.
du Pont, Joan Wheeler, Southport, Conn.

du Pont, John Eleuthere, Newton Square, Pa.
du Pont, Pierre Samuel III, Rockland, Del.
Duchossois, Richard, Barrington, Ill.
Duchossois, Richard Louis, Barrington Hills, Ill.
Duda family, Orlando, Fla.
Duemling, Louisa Copeland, Washington, D.C.
Duke, Doris, Somerville, N.J., et al.
Duke, Jennifer Johnson, Jacksonville, Fla.
Durst family, NYC et al.
Durst David M., NYC.
Durst, Royal H., Westchester County, N.Y.
Durst, Seymour B., NYC.
Durwood, Stanley Hugh, Kansas City, Mo.
Dyson, Charles Henry, NYC.

Earhart, Anne Catherine Getty, Seattle; S.F.; Laguna Beach.
Ebrahimi, Fred Farhad, Denver, Colorado.
Edison (Doc), Sr., —.
Edson, John Orin, Seattle.
Edward (Ted),—.
Egan, Michael S., Fort Lauderdale, Florida.
Egan, Richard J., Hopkinton, Massachusetts.
Eisner, Michael D., Los Angeles, California.
Ellis, Alpheus Lee, Tarpon Springs, Fla.
Ellison, Lawrence Joseph, Atherton, Calif.
Engelhard, Jane B., Far Hills, New Jersey.
Engelstad, Ralph L., Las Vegas, Nevada.
Eulich, John Freeman, Dallas.
Evans, James Emmett, Dade City, Fla.
Evans, Thomas Mellon, NYC.

Farb, Harold, Houston.
Farish family, Houston origin.
Farish, William Stamps III, Versailles, Ky.
Farley, William Francis, Chicago.
Farmer, Richard T., Indian Hill, Ohio.
Faulkner, Mary Belin du Pont, Brookline, Mass.
Feeney, Charles F., London, England.
Feld, Kenneth, Potomac, Maryland.
Ferry, Sandra (Rockefeller), Cambridge, Mass.
Fetzer, John Earl, Kalamazoo, Mich.
Fickling, William Arthur, Macon, Ga.
Field, Federick (Ted) Woodruf, Beverly Hills.
Field, Marshall V., Lake Forest, Ill.
Fireman, Paul B., Newton, Massachusetts.
Firestone family, Akron, Ohio.
Fisher (Lawrence) family, Detroit area, Palm Beach.
Fisher (Oliver) family, Seattle et al.
Fisher family (Detroit), Detroit area; Palm Beach.
Fisher family (Seattle), Seattle area.
Fisher, Donald George, San Francisco.
Fisher, Doris F., San Francisco.
Fisher, John J., San Francisco.
Fisher, Lawrence, NYC.
Fisher, Max Martin, Franklin, Mich.
Fisher, Robert J., San Francisco.
Fisher, William F., San Francisco.
Fisher, Zachary, NYC.
Flagler family, Chapel Hill, North Carolina.
Flatley, Thomas John, Milton, Mass.
Fleischer, Ernest Melvin, Kansas City, Mo.
Flint, Lucile Evelina du Pont, Greenville, Del.
Fogelman, Avron B. [ ], Memphis.
Forbes, Malcolm S. (deceased), Far Hills, N.J.
Forbes, Malcolm Stevenson, Far Hills, N.J.
Ford family, Grosse Pointe, Mich.
Ford, Henry II, Palm Beach.
Ford, Josephine, Grosse Pointe Farms, Michigan.
Ford, Kenneth William, Roseberg, Ore.

Ford, William Clay, Grosse Pointe Shores, Mich.
Forman, Michael Robert, Bel Air, California.
Franchetti, Anne, Seal Cove, Maine.
Frankino, Samuel Joseph, Palm Beach, Fla.
Freeman, Houghton, NYC.
Freeman, Mansfield, Greensboro, VT.
Fribourg, Michel, NYC.
Frick, Helen Clay, Pittsburgh.
Frist, Thomas Fr., Jr., Nashville, Tennessee.
Frost, Philip, Miami Beach, Florida.
Fuqua, John Brooks, Atlanta.
Furst, Austin Owen, Jr., New Canaan, Conn.

Galbreath family, Columbus, Ohio.
Galbreath, Daniel Mauck, Columbus, Ohio.
Galbreath, John Wilmer, Columbus, Ohio.
Galesi, Francesco, NYC.
Gallo, Ernest, Modesto, Calif.
Gallo, Julio R., Modesto, Calif.
Galvin, Robert William, Barrington Hills, Ill.
Garvey family, Wichita, Kans., et al.
Gates, Charles Cassius, Jr., Denver, Colorado.
Gates, William Henry III, Seattle.
Gaylord, Edward Lewis, Oklahoma City.
Geballe, Frances K., Woodside, California.
Geffen, David, Malibu, Calif.
Gerry, Alan, Liberty, New York.
Getty family, Calif.; London, et al.
Getty, Caroline Marie, San Francisco, California.
Getty, Eugene (Jean) Paul, London.
Getty, Gordon Peter, San Francisco.
Getty, Mark, London, England.
Getty, Tara Gabriel Galaxy, London, England.
Gill, Timothy E., Denver, Colorado.
Gilmore, James Stanley, Jr., Kalamazoo, Mich.
Glazer, Guilford, Beverly Hills.
Goizueta, Roberto Crispulo, Atlanta.
Goldman family, Honolulu, Colorado, et al.
Goldman family (Sol), NYC.
Goldman, Alfred Dreyfus, Oklahoma City.
Goldman, Lillian, Mill Neck, N.Y.
Goldman, Monte Henry, Honolulu and Oklahoma City.
Goldman, Rhoda Haas & family, San Francisco, California.
Gonda family, Beverly Hills.
Gonda, Leslie L., Beverly Hills, California.
Gonda, Louis L., Beverly Hills, California.
Goodman, Murray Henry, Palm Beach, Fla.
Goodson family, Los Angles, California.
Goodson, Mark Les, NYC.
Gordy, Berry, Los Angeles.
Gore family, Newark, Del.
Gottwald family, Richmond, Va., et al.
Gottwald, Bruce Cobb, Richmond, Va.
Gottwald, Floyd Dewey, Jr., Richmond, Va.
Gould, Kingdon, Jr., Laurel, Md.
Graham family, Washington, D.C.
Graham, Donald E., Washington, D.C.
Graham, Katharine, Washington, D.C.
Grainger, David William, Skokie, Illinois.
Gramaphone.
Green, Dorothy, Beverly Hills.
Green, Pincus, Meggen, Switzerland.
Greenberg, Maurice (Hank), NYC.
Greenberg, Maurice Raymond, NYC.
Greenewalt, Margaretta Lammot du Pont, Greenville, Del.
Griffin, Ben Hill, Jr., Avon Park, Fla.
Griffin, Mervyn Edward, Beverly Hills, Calif.
Groves, Franklin Nelson, Wayzata, Minn.

Gruss, Joseph S., NYC.
Guccione, Robert Charles, NYC.
Guccione, Robert Charles Jos. Ed. S., NYC.
Guirlinger, Austin Edward, Columbus, Ohio.
Gund family, Cleveland origin.

Haas family, San Francisco.
Haas, Fritz Otto, Ambler, Pa.
Haas, John Charles, Villanova, Pa.
Haas, Josephine B. & family, San Francisco, California.
Haas, Peter E., Jr., & family, San Francisco, California.
Haas, Peter E., Sr., & family, San Francisco, California.
Haas, Robert D. & family, San Francisco, California.
Haas, Walter A., Jr., & family, San Francisco, California.
Haebler family, Milwaukee, Wisconsin et al.
Haft family, Washington, D.C.
Haft, Herbert Herman, Washington, D.C.
Haft, Robert Michael, Washington, D.C.
Hahn, Ernest Walter, Rancho Santa Fe, Calif.
Hall, Donald Joyce, Mission Hills, Kansas.
Hall, Evelyn Anneberg, Palm Beach, Fla.
Hamilton, Dorrance Hill, Stratford, Pa.
Hammer, Armand, Los Angeles and NYC.
Hammons, John Quentin, Springfield, Mo.
Hamon, Jake Louis, Jr., Dallas.
Hanson, John Kendrick, Forest City, Iowa.
Harbert, John Murdoch III, Birmingham, Ala.
Hardesty, Floyd Roger, Tulsa.
Hardie, Mary Jane Hoiles, Marysville, California.
Hardy, Joseph Alexander, Farmington, Pa.
Harriman, William Averell, Middleburg, Va.
Harrison, James Frank, Chattanooga.
Hascoe, Norman, Greenwich, Connecticut.
Haseotes family, Massachusetts area.
Haupt, Enid Anneberg, NYC.
Hauser, Gustave, NYC.
Hayden, Bill Harris, Austin, Tex.
Hazen, Lita Anneberg, NYC, Los Angeles.
Hearst family (John Randolph), California, NYC area, et al.
Hearst, Austin, NYC.
Hearst, David Whitmire Hearst, Los Angeles.
Hearst, George Randolph, Jr., Los Angeles.
Hearst, Hope Chandler, Beverly Hills.
Hearst, Randolph Apperson, NYC.
Hearst, William Randolph III, San Francisco, California.
Hearst, William Randolph, Jr., NYC, N.Y.
Hearts, George Randolph, Jr., Los Angeles, California.
Hechinger family, Washington, D.C.
Heinz, Henry John II, Pittsburgh.
Heinz, Henry John III, Fox Chapel, Pa.
Heinz, Teresa F., Fox Chapel, Pa.
Helmsley, Harry Brakman, NYC; Greenwich, Conn.
Hemmeter, Christopher Bagwell, Kahala Beach, Hawaii.
Hendrix, Helen Hunt, NYC.
Herb, Marvin, Chicago, Ill.
Herbert, —.
Hess, Leon, NYC and Deal, N.J.
Hewlett, William Redington, Portola Valley, California.
Heyman, Samuel J., New York.
Hickingbotham, Frank Delano, Little Rock Ark.
Hill, Margaret Hunt, Dallas, Texas.
Hillblom, Larry L., Saipan, Northern Mariana Islands.
Hillenbrand family, Batesville, Ind.
Hillman, Henry Lea, Pittsburgh.
Hillman, Howard Butcher, Greenwich, Conn.
Hillman, Tatnall Lea, Radnor, Pennsylvania.
Hilton, William Barron, Holmby Hills, Calif.
Hines, Gerald Douglas, Houston.

Hixon family, Pasadena, Calif.
Hobby, Oveta Culp, Houston.
Hoiles family (Clarence), California et al.
Hoiles, Harry Howard, Santa Ana, Calif.
Holding, Robert Earl, Salt Lake City, Utah.
Hollingsworth, John D., Greenville, South Carolina.
Hooker, Jeanette Annenberg, NYC; Palm Beach.
Horvitz family, Cleveland origin.
Horvitz, Harry Richard, Cleveland.
Horvitz, Leonard C., Cleveland.
Horvitz, William D., Hollywood, Fla.
Hostetter, Amos Barr, Jr., Boston, Massachusetts.
Houghton family, Corning, New York.
Houghton, Amory Jr., Corning, N.Y.
Howard, Robert Staples, Rancho Santa Fe, Calif.
Hoyt family, NYC area; Santa Fe.
Hubbard, Stanley Stub, St. Mary's Point, Minn.
Huber family, Rumson, New Jersey.
Huffington family, Houston, Texas.
Huffington, Roy Michael, Houston.
Hughes (Howard) family, California, Nevada.
Huizenga, Harry Wayne, Fort Lauderdale, Florida.
Huizenga, Wayne, Fort Lauderdale, Florida.
Hulman, Mary Fendrich, Terre Haute, Ind.
Hunt brothers, Dallas.
Hunt, Caroline Rose, Dallas.
Hunt, Johnnie Bryan, Goshen, Arkansas.
Hunt, Lamar, Dallas.
Hunt, Nelson Bunker, Dallas.
Hunt, Ray Lee, Dallas.
Hunt, Ruth June, Dallas.
Hunt, Ruth Ray, Dallas.
Hunt, Swance, Denver.
Hunt, Swanee, Dallas.
Hunt, William Herbert, Dallas.
Hunting family, Grand Rapids, Mich.
Huntsman, Jon Meade, Salt Lake City, Utah.
Huntsman, Jon Mean, Salt Lake City.
Hwang, Kyupin Philip, Los Altos Hills, Calif.
Hyde, Joseph Reeves III, Memphis, Tennessee.

Icahn, Carl Celian, Bedford, N.Y.
Idema family, Grand Rapids.
Ilitch, Michael, Detroit, Michigan area.
Imperatore, Arthur Edward, NYC.
Ingersoll, Ralph McAllister II, Lakeville, Conn.
Ingram, Erskine Bronson, Nashville, Tenn.
Ireland family, Birmingham, Ala.
Irvine family, Middleburg, Virginia, et al.
Jacobs, David H., Bay Village, Ohio.
Jacobs, Irwin Lawrence, Minneapolis.
Jacobs, Jeremy Maurice, East Aurora, N.Y.
Jacobs, Richard E., Lakewood, Ohio.
Jaeger, James Leroy, Cincinnati.
Jamail, Joseph Dahr, Jr., Houston.
Jandernoa, Michael J., Grand Rapids, Michigan.
Jenkins family, Lakeland, Fla.
Jobs, Steven Paul, Los Gatos, Calif.
Johnson family, Scattered.
Johnson, Barbara Piasecka, Princeton, New Jersey.
Johnson, Belton Kleberg, San Antonio, Tex.
Johnson, Charles B., Hillsborough, California.
Johnson, Edward C. III, Boston.
Johnson, James Loring, East Hampton, N.Y.
Johnson, John Harold, Chicago.
Johnson, Rupert H., Jr., Hillsborough, California.
Johnson, Samuel Curtis, Racine, Wis.
Jones, Glenn Robert, Denver, Colorado.

Jones, Jerral Wayne, Dallas, Texas.
Jordan family, Boston origin.
Joseph, Edward S., —.
Joseph, George, Los Angeles, California.

Kaiser, George B., Tulsa.
Kaleioku, —.
Kalikow, Peter Stephen, NYC.
Kalmanovitz, Lydia, Tiburon, Calif.
Kalmanovitz, Paul, Tiburon, Calif.
Kamins, Philip Evans, Beverly Hills, California.
Kaskel, Howard, NYC.
Kaskel family, NYC.
Kauffman, Ewing Marion, Mission Hills, Kans.
Kauffman, Muriel, Mission Hills, Kansas.
Kavadas, Kathryn Bancroft, Waban, Mass.
Keck, Howard Brighton, Los Angeles.
Keck, William Myron II, Los Angeles.
Keck, William Myron III, Los Angeles.
Keinath, Pauline MacMillan, St. Louis, Mo.
Kelley family, Honolulu.
Kelly, Donald Philip, Chicago.
Kelly, William Russell, Troy, Mich.
Kennedy family, Boston origin.
Kerkorian, Kirk, Los Angeles, Las Vegas.
Kieckhefer, Robert Hazelwood, Prescott, Ariz.
Kimmel, Sidney, Philadelphia, Pennsylvania.
King family, Short Hills, N.J.
Kleberg family, King Ranch, Tex.
Klink, Bettina, Los Angeles.
Kluge, John Werner, Chalottesville, Va.
Knapp, Cleon T. (Bud), NYC.
Knight, James Landon, Bel Harbour, Fla.
Knight, Philip Hampson, Hillsboro, Oregon.
Koch, Charles de Ganahl, Wichita, Kans.
Koch, David Hamilton, NYC.
Koch, Frederick Robinson, NYC.
Koch, William Ingraham, Boston.
Kogod, Arlene Smith, Washington, D.C.
Kohlberg, Jerome Spiegel, Jr., Mount Kisco, N.Y.
Kohler family, Kohler, Wis. origin.
Koll, Donald Michael, Newport Beach, Calif.
Koll, Donald Milton, Newport Beach, Calif.
Koshland, Daniel E., Jr., Lafayette, California.
Kovner, Bruce, NYC.
Kozmetsky, George, Austin, Tex.
Kravis, Henry R., NYC.
Krehbiel family, Illinois area.
Krehbiel, Frederick A., Hinsdale, Illinois.
Krehbiel, John, Lisle, Illinois.
Krehbiel, John Hammond, Sr., Downers Grove, Ill.
Kroc, Joan Beverly, La Jolla, Calif.

Laird family, Delaware area.
Lammont du Pont, —.
Landegger family, NYC; London, et al.
Landegger, Carl Clement, NYC.
Landegger, George Francis, Rye Brook, N.Y.
Lauder, Estee, NYC.
Lauder, Leonard Alan, NYC, the Hamptons.
Lauder, Ronald Steven, NYC.
Laughlin, Donald Joseph, Laughlin, Nev.
Lauren, Ralph, NYC and vicinity.
Lawrence family, NYC area.
Lawrence, M. Larry, San Diego.
LeBaron, Dean Francis, Brookline, Mass.
LeBow, Bennett Stephen, Saddle River, N.J.
LeFrak, Samuel Jayson, NYC.
LeFrank, Samuel Jayson, NYC.

Lear, Norman Milton, Los Angeles.
Lebensfeld, Harry, NYC.
Lee, Thomas Haskell, Boston, Massachusetts.
Leininger, James Richard, San Antonio, Texas.
Lennon, Fred A., Chagrin Falls, Ohio.
Lerner, Alfred, Shaker Heights, Ohio.
Lerner, Theodore Nathan, Chevy Chase, Md.
Lesher, Dean Stanley, Orinda, California.
Levine, Leon, Charlotte, N.C.
Levine, Stuart Robert, Stratham, N.H.
Levy, Leon, NYC.
Lewis, Peter Benjamin, Maryland Village, Ohio.
Lewis, Ralph Milton, Upland, Calif.
Lewis, Reginald F., NYC.
Lilly family, Indianapolis et al.
Lindemann, George, Wellington, Florida.
Lindermann, George L., Greenwich, Conn.
Lindener, Carl Henry II, Cincinnati.
Littlefield, Edmund Wattis, Burlingame, Calif.
Litwin, Leonard, NYC.
Loeb, John Langeloth, NYC.
Louis, John Jeffrey Jr., Winnetka, Ill.
Ludwin, Daniel Keith, NYC.
Lund, Sharon Disney, Los Angeles.
Lunger, Mary Jane du Pont, Wilmington, Del, and NYC.
Lupton, John Thomas, Lookout Mountain.
Lurie, Washington, D.C.
Lurie, Robert, Chicago.
Lurie, Robert Alfred, San Francisco.
Lurie, Robert Harris, (deceased), Chicago.
Lusk, David, Newport Beach, Calif.
Lykes family, Florida origin.
Lyon, Frank, Jr., Little Rock, Arkansas.
Lyon, William, Newport Beach, Calif.

MacMillan, Whitney, Minneapolis.
MacElree, Jane Cox, Newtown Square, Pa.
MacMillan family, Minneapolis orig.
MacMillan, Cargill, Palm Springs, Calif.
MacMillan, Cargill, Jr., Minneapolis.
MacMillan, John Hugh, Fort Lauderdale, Fla.
MacMillan, John Hugh, III, Hillsboro Beach, Fla.
MacMillan, W. Duncan, Wayzata, Minn.
MacMillan, Whitney, Minneapolis.
Mack family, NYC area.
Macmillan, W. Cuncan, Wayzata, Minnesota.
Maglica, Anthony, Anaheim, California.
Magness, Bob John, Englewood, Colo.
Malkin, Judd David, Winnetka, Ill.
Malone, John C. Parker, Colorado
Malone, Mary Alice Dorrance, Coatesville, Pa.
Mandel family, Shaker Heights, Ohio, et al.
Mandel, Jack N., Shaker Heights, Ohio.
Mandel, Joseph C., Lyndhurst, Ohio.
Manges, Clinton, Freer, Tex.
Mann, Ted, Los Angeles.
Manoogian, Alex, Taylor, Mich.
Manoogian, Richard Alexander, Grosse Pointe Farms, Mich.
Marcus, Bernard, Atlanta.
Marion, Anne Burnett Sowell, Fort Worth.
Marion, Anne Widfohr, Fort Worth, Texas.
Maritz, William Edward, St. Louis.
Markkula, Armas Clifford, Woodside, Calif.
Markkula, Armas Clifford, Jr., Woodside, Calif.
Marks, Nancy Smith, Chestnut Hill, Massachusetts area.
Marriott family, Washington, D.C.
Marriott, Alice Sheets, Washington, D.C.
Marriott, John, Washington, D.C.

Marriott, John Willard, Jr., Chevy Chase, Md.
Marriott, Richard Edwin, Potomac, Md.
Mars, Forrest Edward, Jr., McLean, Va.
Mars, Forrest Edward, Sr., Las Vegas.
Mars, John Franklyn, Arlington, Virginia
Marshall, Barbara, Kansas City, Missouri.
Marshall, James Howard II, Houston, Texas.
Marx, Leonard Maximilian, Scarsdale, N.Y.
Massey, Jack Carroll, Nashville.
Mathile, Clayton Lee, Dayton, Ohio.
May, Cordelia Scaife, Ligonier, Pa.
May, Irene Sohie du Pont, Wilmington, Del.
May, Irene Sophie du Pont, Wilmington, Delaware.
May, Peter, NYC; Bridgewater, Conn.
McCaw, Bruce R., Seattle.
McCaw, Craig O., Bellevue, Washington.
McCaw, John Elroy, Seattle.
McCaw, John Elroy, Jr., Bellevue, Washington.
McCaw, Keith W., Seattle.
McClatchy family, Sacramento, Calif., et al.
McCulloch, A. Donald, Jr., Bryn Mawr, Pa.
McDonnell family, St. Louis.
McEvoy, Nan Tucker, San Francisco.
McGlothlin, James, Bristol, Tenn.
McGovern, Patrick Joseph, Nashua, N.H.
McGraw family, NYC.
McLane, Robert Drayton, Jr., Temple, Tex.
McLean, Malcom Purcell, NYC.
McLendon, Gordon Barton, Lake Dallas, Tex.
MeEvoy, Nan Tucker, San Francisco.
Mead family, Wisconsin Rapids.
Meijer family, Grand Rapids, Michigan.
Meijer, Frederick G.H., Grand Rapids, Michigan.
Mellon, —.
Mellon family, Pittsburgh area.
Mellon family (Richard K.), Ligonier, Pa.
Mellon, Paul, Upperville, Va.
Mellon, Richard Prosser, Ligonier, Pa.
Mellon, Stewart Prosser, Ligonier, Pa.
Mellon, Timothy, Manchester, N.H.
Menard, John R., Jr., Eau Claire, Wisconsin.
Mendik, Bernard H., NYC.
Mennen family, Morristown, New Jersey.
Meyer, August Christopher, Champaign, Ill.
Milbury, Cassandra, Ligonier, Pa.
Milbury, Cassandra Mellon, Ligonier, Pennsylvania.
Milken, Lowell Jay, Los Angeles, California.
Milken, Michael Robert, Los Angeles, California.
Millard, William H., San Vincente, Saipan.
Millbury, Cassandra Mellon, Ligonier, Pa.
Miller, Diane Disney, Los Angeles.
Miliken, Gerrish Hill, Greenwich, Conn.
Milliken, Minot King, NYC.
Milliken, Roger, Spartanburg, S.C.
Mills family, Chattanooga, Tennessee.
Mills, Alice Francis du Pont, Middleburg, Va.
Milstein family, NYC area.
Milstein, Monroe Gray, Burlington, N.J.
Milstein, Paul, NYC and Scarsdale, N.Y.
Milstein, Seymour, NYC.
Miner, Robert N., San Francisco, California.
Mitchell, George Phydias, Houston.
Monaghan, Thomas Stephen, Ann Arbor, Michigan.
Moncrief, William Alvin, Jr., Fort Worth, Tex.
Moncrief, William Alvin, Sr., Fort Worth.
Mondry family, Dearborn, Mich.
Moody, Robert Lee, Galveston, Tex.
Moore, Gordon Earle, Santa Clara County, California.

Moore, Jerry J., Houston, Texas.
Moores, John Jay, Sugar Land, Tex.
Moran, James Martin, Hillsboro Beach, Fla.
Morgan, Frank Sherman, Kansas City, Mo.
Morgan, Mary Clark Rockefeller, NYC.
Morris, William Shivers III, Augusta, Ga.
Mosbacher, Robert Adams, Houston.
Mott family, Flint, Mich.
Mugar, David Graves, Boston.
Munger, Charles Thomas, Los Angeles, California.
Murchison, Clint William, Jr., Dallas.
Murdoch, David Howard, Bel Air, Calif.
Murdoch, Keith Rupert, NYC, London.
Murphy family, El Dorado, Ark.
Murphy, Charles Haywood, Jr., El Dorado, Ark.
Muss, Stephen, Miami Beach.

Naify family, San Francisco.
Naify, Marshal, San Francisco.
Naify, Robert Allen, San Francisco.
Nasher, Raymond Donald, Dallas.
Newhouse, Donald Edward, NYC.
Newhouse, Samuel Irving, Jr., NYC.
Nicholas, Peter M., Boston area, Massachusetts.
Nichols, Miller, Prairie Village, Kans.
Nielsen, Arthur Charles, Jr., Winnetka, Ill.
Noorda, Raymond J., Provo, Utah.
Nordstrom family, Seattle, Washington.
Norris family, Marshalltown, Iowa.
Norris, Diana Strawbridge, Palm Beach, Fla.

O'Conner family, Victoria, Tex.
O'Neill family, Los Angeles area.
O'Neill, Abby Milton Rockefeller, Oyster Bay, N.Y.
O'Neill, Richard Jerome, San Juan Capistrano.
Olenicoff, Igor [ ], Laguna Beach, Calif.
Olnick, Robert, Palm Beach and NYC.
Olsen, Kenneth Harry, Lincoln, Mass.
Ono, Yoko, NYC.
Ordway family, St. Paul origin.
Ottaway, James Haller, Sr., Campbell Hall, N.Y.

Packard, David, Los Altos Hills, Calif.
Palevsky, Max, Beverly Hills.
Paley, William S., NYC, Scouthampton, N.Y.
Pamplin, Robert Boisseau, Jr., Lake Oswego, Oregon.
Pamplin, Robert Boisseau, Sr., Portland, Ore.
Park, Roy Hampton, Ithaca, N.Y.
Parker, Jack, NYC; Boca Raton, Fla.
Pasculano, Lynne, NYC; Greenwich, Connecticut.
Pasquerilla, Frank James, Johnstown, Pa.
Patterson, Andrea Currier, The Plains, Va.
Paulson, Allen Eugene, Savannah, Ga.
Paulucci, Luigino Francesco, Sandford, Fla.; Duluth, Minn.
Paxson, Lowell W., Clearwater, Fla.
Payson, Charles Shipman, Portland, Me.
Pearson, Edith du Pont, Montchanin, Del.
Peery, Richard Taylor, Palo Alto, Calif.
Peltz, Nelson, Bedford, New York.
Pennington, Claude Bernard, Baton Rouge, La.
Pennington, William Norman, Reno, Nev.
Penske, Roger, Red Bank, New Jersey.
Perdue, Franklin Parsons, Salisbury, Maryland.
Perelman, Ronald Owen, NYC.
Perenchio, Andrew Jerrold, Bel Air, California.
Perot, Henry Ross, Dallas.
Perry, Claire Eugenia Getty, Laguna Beach, California.
Petersen, Robert Einar, Beverly Hills.
Petrie, Milton, Southampton, N.Y.

Petrie, Milton Jack, NYC.
Pew family, Philadelphia origin.
Phipps family, N.Y. et al.
Phipps, Howard, Jr., Westbury, N.Y.
Pictet, Marion MacMillan, Geneva, Switzerland.
Pigott family, Seattle.
Pilaro, Anthony Martin, Southampton, N.Y.
Pitcairn family, Bryn Athyn, Pa., et al.
Pogue, Alfred Mack, Dallas.
Pohlad, Carl Ray, Minneapolis.
Pohland, Carl Ray, Minneapolis.
Pontikes, Kenneth Nicholas, Barrington, Ill.
Pope, Generoso Paul, Jr., Manalapan, Fla.
Portman, John Calvin [ ], Atlanta.
Posner, Victor, Miami Beach.
Price, Solomon, La Jolla, Calif.
Primm, Gary Ernest, Las Vegas, Nevada.
Pritzker, Abram Nicholas, Chicago.
Pritzker, Jay Arthur, Chicago.
Pritzker, Robert Alan, Chicago.
Pulitzer family, St. Louis, Missouri, et al.
Pulliam family, Indianapolis, et al.
Pulliam, Eugene Smith, Indianapolis.

Rains, Liliore Green, Beverly Hills.
Rainwater, Richard Edwards, Fort Worth; Nantucket.
Rangos, John G., Sr., Pittsburgh.
Redstone, Sumner Murray, Newton Centre, Massachusetts.
Reed family, Seattle, et al.
Reid, Elizabeth Ann Hall, Denton, Tex.
Reinhardt, Dwayne B., La Crosse, Wis.
Resnick family, NYC area.
Resnick, Burton Paul, NYC & Rye, N.Y.
Reynolds, Donald Worthington, Las Vegas.
Rhoads, D. Dean, North Palm Beach, Fla.
Rich, Marc, Zug, Switzerland.
Rich, Robert Edward, Sr., Buffalo, New York.
Rich, Robert, Sr., Point Abino, Ontario.
Richardson family, Grensboro, N.C.
Riggio, Leonard, NYC.
Riklis, Meshulam, NYC.
Rinker, Marshall Edison (Doc), Palm Beach, Fla.
Rizzuto, Leandro P., Greenwich, Conn.
Robert, —.
Roberts, Ann Clark, Rockefeller, NYC.
Roberts, George R., San Francisco Bay area.
Roberts, Ralph J., Coatesville, Pennsylvania.
Robins family, Richmond, Va.
Robins, Edwin Claiborne, Richmond, Va.
Robinson, Jesse Mack, Atlanta, Georgia.
Rock, Arthur J., San Francisco.
Rockefeller (John D.) family, NYC et al.
Rockefeller (William), Conn., NYC et al.
Rockefeller family (Nelson), NYC, et al.
Rockefeller family (William), Greenwich, Conn.; NYC.
Rockefeller, David, NYC.
Rockefeller, David Sr., NYC.
Rockefeller, Hope Aldrich, Woodstock, Vt.
Rockefeller, John Davison IV, Wash., D.C.; Charlestown, W.Va.
Rockefeller, Laurance Spelman, NYC.
Rockefeller, Rodman Clark, NYC.
Rockefeller, Steven Clark, Middlebury, Vt.
Rockefeller, Winthrop Paul, Morrilton, Arkansas.
Rollins family, Atlanta; Wilmington.
Rollins, John W., Sr., Greenville, Del.
Rollins, Orville Wayne, Atlanta.
Root, Chapman Shaw, Ormond Beach, Fla.
Rose family, NYC.

Rosenberg, Henry A., Jr., Baltimore.
Rosenberg, Ruth Blaustein, Baltimore.
Rosenwald family, NYC.
Ross, Wilhelmina du Pont, Montchanin, Del.
Roush family, Akron, Ohio origin.
Rowling, Reese McIntosh, Corpus Christi, Tex.
Rudin family, NYC.
Rudin, Jack, NYC.
Rudin, Lewis, NYC.
Russell family, Alexander City, Alabama.
Rust, Eleanor Francis du Pont, Thomasville, Ga.
Ryan, Patrick George, Chicago.

Sackler, Arthur Michell, NYC.
Sakioka, Katsumasa (Roy), Costa Mesa, Calif.
Sammons family, Dallas.
Sammons, Charles A., Dallas.
Sandler family, Oakland, Calif.
Sarofim, Fayez Shalaby, Houston.
Saul, Bernard Francis II, Chevy Chase, Maryland.
Scaife, Richard Mellon, Shadyside, Pa.
Scharbauer, Clarence, Jr., Midland, Tex.
Schiff family,, Cincinnati, Ohio.
Schneider, Donald J., Green Bay, Wisconsin.
Schnitzer family, Portland, Ore.
Schoellkopf, Caroline Rose Hunt, Dallas.
Schottenstein family, Columbus, Ohio.
Schripps (E. W.) family, Cincinnati origin.
Schuler, James K., Honolulu, Hawaii.
Schwab, Charles R., Atherton, California.
Schwan family, Sioux Falls, South Dakota.
Schwan, Marvin Maynard, Sioux Falls, S.D.
Scripps (E. W.) family, Cincinnati origin.
Scripps (J. E.) family, Detroit area et al.
Scripps, Edward Wyllis, Charlottesville, Va.
Scully family, Dwight and Buffalo.
Searle family, Lake Forest, Illinois.
Searle, Daniel Crow, Winnetka, Ill.
Searle, William Louis, Lake Forest, Ill.
Sedwick, Jud, Butler, Pa.
Segerstrom family, Orange Co., Calif.
Self, James, Greenwood, S.C.
Selig, Martin, Seattle.
Shakarian, David B., Pittsburgh; Bal Harbour, Fla.
Shapiro family, Boston origin.
Sharp family, Wilmington, Del.
Sharp, Bayard, Centreville, Del.; Florida.
Sharp, Hugh Rodney III, Wilmington, Delaware.
Sharp, Hugh Rodney, Jr., Wilmington, Del.
Sharp, Peter Jay, NYC.
Sheehan, Jean Ellen du Pont, Coral Gables.
Shelton, Robert, Kerrville, Tex.
Sherman family, Dayton, Ohio.
Shivers III, —.
Shoen family, Phoenix.
Shoen, Leonard Samuel, Las Vegas.
Shorenstein, Waler Herbert, San Francisco.
Sidamon-Eristoff, Anne, NYC.
Sidamon-Eristoff, Anne Phipps, NYC.
Silliman, Mariana, Montchanin, Delaware.
Silliman, Mariana du Point, Hagley and
Silverstein, Larry Abraham, NYC.
Simmons, Harold Clark, Dallas.
Simmons, Richard Paul, Sewickley, Pennsylvania.
Simon Herbert, Indianapolis, NYC.
Simon, Esther Annenberg, NYC.
Simon, Melvin, Indianapolis, Indiana.
Simon, Norton Winfred, Los Angeles area.

Simon, William Edward, New Vernon, N.J.
Simplot, John Richard, Boise, Idaho.
Simpson, Abby Rockefeller, NYC.
Singleton, Henry Earl, Los Angeles.
Skaggs, Leonard Samuel, Salt Lake City.
Skaggs, Leonard Samuel, Jr., Salt Lake City.
Slavik, James Donald, Irvine, Calif.
Smart, Richard Palmer Kaleioku, Honolulu and.
Smith (Charles E.) family, Washington, D.C.
Smith (Dee G.) family, Brigham City, Utah.
Smith family, Chicago orig.
Smith, Athalie Irvine, Middleburg, VA.; California.
Smith, Charles E., Washington, D.C.
Smith, Delford Michael, McMinnville, Ore.
Smith, Frederick Wallace, Memphis, Tenn.
Smith, Margaret Lewis du Pont, Paoli, Pa.
Smith, Marian Uldine Day, Alanta.
Smith, Richard Alan, Chestnut Hill, Mass.
Smith, Robert H., Washington, D.C.
Smith, Vivian Leatherberry, Houston.
Snyder, Richard Wesley, Dallas.
Solheim, Karsten, Phoenix.
Solomon, Russell, Sacramento.
Solow, Sheldon Henry, NYC.
Sommer, Viola, Great Neck, New York.
Sorenson, James LeVoy, Salt Lake City, Utah.
Soros, George, NYC.
Sosnoff, Martin Toby b316,—.
Sowell, Anne Windfohr, Fort Worth, Tex.
Spangler, Clemmie Dixon, Charlotte, N.C.
Spanos, Alexander Gus, Stockton, California.
Speer, Roy Merrill, Clearwater, Fla.
Spelling, Aaron, Holmby Hills, California.
Spelman, —.
Spiegel, Abraham, Beverly Hills.
Spielberg, Steven Allen, Beverly Hills, et al.
Stahl, Stanley Irving, NYC.
Stanley, John R., Houston, Texas
Stark, Ray, Holmby Hills, Calif.
Stein, Jay, Jacksonville, Florida.
Steinberg, Saul Philip, NYC.
Steinhardt, Michael, NYC.
Stem, Leonard Norman, NYC.
Stempel, Ernest E., Hamilton, Bermuda.
Stephens, Jackson Thomas, Little Rock, Ark.
Stephens, Wilton Robert, Little Rock, Ark.
Stern, Leonard Norman, NYC.
Stone family, Chicago.
Stowers, James Evans, Jr., Kansas City, Missouri.
Strawbridge, George, Chester County, Pa.
Strawbridge, George, Jr., West Chester, Pa.
Stroh family, Detroit.
Stryker family, Kalamazoo, Mich.
Stuart family, Seattle, Washington.
Stuart, Dwight Lyman, Beverly Hills.
Stuart, Elbridge Hadley, Jr., Bellevue, Idaho.
Stuart family, Bellevue, Idaho.
Sulzberger family, NYC.
Sulzberger, Arthur Ochs, NYC.
Sulzberger, Iphigene Ochs, NYC.
Sutherland family, Kansas City, Mo.
Swanson, Robert A., San Francisco area.
Swig family, San Francisco.
Swig, Melvin, San Francisco.
Swig, Richard, San Francisco.
Syms, Sy, Lyndhurst, N.J.

Taper, Sydney Mark, Beverly Hills, California.

Tauber, Laszlo Nandor, Potomac, Maryland.
Taubman, Adolph Alfred, Bloomfield Hills, Michigan.
Taylor family, Boston, Massachusetts origin.
Taylor, Jack Crawford, St. Louis, Missouri.
Teel, Joyce Raley, Sacramento, California.
Temple family, Diboll, Tex., et al.
Terra, Daniel James, Chicago.
Thalheimer, Louis, Baltimore.
Thompson family, Dallas.
Thompson, B. Ray, Knoxville, Tenn.
Thorn, Laura Simpson, Bedford Hills, N.Y.
Thorne, Oakleigh Blakeman, Millbrook, N.Y.
Tisch, Laurence Alan, NYC and Rye, N.Y.
Tisch, Preston Robert, NYC.
Tompkins family, San Francisco.
Tow, Leonard, New Canaan, Conn.
Tramiel, Jack, Zephyr Cove, Nev.
Trump, Donald John, NYC.
Trump, Fred Charles, NYC.
Turner family, Columbus, Ga.
Turner, Robert Edward (Ted) III, Roswell, Ga.
Turner, William Butler, Columbus, Georgia.
Tyson, Barbara, Fayetteville, Arkansas.
Tyson, Donald John, Springdale, Ark.
Tyson, Randall William, Fayetteville, Ark.
Tyson, William, Fayetteville, Ark.

Udvay-Hazy, Stephen Ferencz, Beverly Hills, California.
Ueltschi, Albert Lee, Irving, Tex.
Uihlein family, Milwaukee, et al.
Unaune family, Secaucus, New Jersey et al.
Upjohn family, Kalamazoo, Michigan.

Van Andel, Jay, Ada, Michigan.
Van Beuren, Hope Hill, Newport, ~~R.I.;~~ Middletown, R.I.
Van Every family, N.C., S.C., et al.
Van Kampen, Robert Donald, West Chicago, Ill.
van Platen, Ruth Changler, San Marino, Calif.
Vesco, Robert Lee, Havana, Cuba.
Vogel, Jacqueline Mars, Bedminster, N.J.
Vollum Howard, Portland, Ore.
Vollum, Howard, Beaverton, Ore.
Vose, Charles Alden, Jr., Oklahoma City.
Vose, Charles Alden, Sr., Oklahoma City.

Wagner, Cyril Anthony, Jr., Midland, Tex.
Waitt, Norman W., North Sioux City, South Dakota.
Waitt, Theodore W., North Sioux City, South Dakota.
Walton, Alice L., Rogers, Arkansas.
Walton, Helen, Bentonville, Arkansas.
Walton, James Lawrence, Bentonville, Ark.
Walton, Jim C., Bentonville, Ark.
Walton, John T., San Diego, California.
Walton, S. Robson, Bentonville, Ark.
Walton, Samuel Moore (deceased), Bentonville, Ark.
Wang, An, Lincoln, Mass.
Ward family, Honolulu.
Ward, Louis Larrick, Kansas City, MO.
Washington, Dennis, Missoula, Mont.
Wasserman, Lewis, Palm Springs, Calif.
Wasserman, Lewis Robert, Beverly Hills, Calif.
Watson (Thomas) family, Armonk, N.Y. origin.
Watson family, Southern California origin.
Wattis, —.
Wattis family, Ogden, Utah orig.
Weaver, J. Wayne, Darien, Connecticut.
Weber, Charlotte Colkert, Ocala, Fla.
Wege family, Grand Rapids, Mich.
Weiler family, NYC.

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Weiler, Alan, NYC.
Weiler, Jack D., NYC.
Weinberg, Harry, Honolulu.
Weinberg, John Livingston, NYC.
Weis, Robert Freeman, Sunbury, Pa.
Weis, Sigfried, Lewisburg, Pa.
Wexner, Bella, Columbus, Ohio.
Wexner, Leslie Herbert, Columbus, Ohio.
Wexner, Susan, NYC.
Weyerhaeuser family, St. Paul, Seattle, et al.
Whitehead, Edwin Carl, Greenwich, Conn.
Whitney, Betsey Cushing Roosevelt, Manhasset, N.Y.
Whittier family, Southern Calif.
Wien, Lawrence Arthur, NYC.
Willard Jr., —.
William, —.
Williams, Ariadine Getty, Los Angeles, California.
Williams, Arthur L., Jr., Duluth, Ga.
Williams, Clayton Wheat, Midland, Tex.
Williams, Max, Dallas.
Wilmot family, Rochester, New York.
Wirtz family, Chicago.
Wolfe family, Columbus, Ohio.
Woodner, Ian, NYC.
Woodruff, Robert Winship, Atlanta.
Wrigley, William, Chicago.

Yates family, Artesia, N.M.

Zell, Samuel, Chicago.
Ziff, Daniel Morton, NYC.
Ziff, Dirk Edward, NYC.
Ziff, Robert David, NYC.
Ziff, William Bernard, Manalapan, Fla.
Ziff, William Bernard, Jr., Manalapan, Florida.
Zilkha, Ezra Khedouri, NYC.
Zimmerman, William, Huntington Beach, Calif.
Zuckerman, Mortimer Benjamin and family, NYC; Washington, DC.

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON TAXATION,
Washington, DC, April 25, 1995.

Hand Delivery
The Hon. WARREN M. CHRISTOPHER,
Secretary of State,
Washington, DC 20520

DEAR MR. CHRISTOPHER: The Self-Employed Health Insurance Act, Public Law 104–7, directs the staff of the Joint Committee on Taxation to undertake a comprehensive study and to report by June 1, 1995, on the issues raised by the President's proposal to impose a tax on U.S. citizens and certain U.S. residents who expatriate. In order to complete this study, the staff of the Joint Committee has submitted to Conrad K. Harper, the Department of State Legal Adviser, two separate requests for information, one on April 4, 1995, and a second on April 20, 1995. The Department of State staff members handling this matter have informed our staff that the earliest they can meet to discuss the first information request would be on May 1, 1995. We have not yet been informed as to when the second information request could be addressed.

The staff of the Joint Committee also have been unable to obtain access to the individuals at the Department of State who were involved in the design of the President's proposal, despite verbal requests for such assistance. Individuals at the Department of Treasury informed our staff that the Department of State was consulted prior to the introduction of the President's proposal, specifically with regard to the proposed requirement that expatriating individuals submit to the Department of State a financial disclosure form that would in turn be forwarded to the Internal Revenue Service. The staff of the Joint Committee would like to meet with the individuals involved in those discussions to determine the procedures which will be followed by the Administration if the President's proposal is enacted.

As you know, there is a great deal of interest within the Congress in considering legislation relating to the tax treatment of U.S. citizens who relinquish their citizenship for tax avoidance purposes. We are extremely concerned that these delays in obtaining crucial information from the Department of State will make it difficult, if not impossible, for the staff of the Joint Committee on Taxation to complete their report by the statutorily imposed deadline of June 1, 1995. If the critical information needed to evaluate the President's proposal cannot be obtained in a timely fashion, Congress will be hindered in its ability to act on the initiative put forth by the President. We therefore urge you to expedite your response to the Joint Committee on Taxation staff and to allocate whatever resources are necessary to respond to the staff of the Joint Committee in a timely manner.

We ask that you assign an individual at the Department of State to act as a liaison with Kenneth J. Kies, the Joint Committee's Chief of Staff, or his designate with respect to this matter.

Thank you for your cooperation in this matter.

Sincerely,

BILL ARCHER,
Chairman.
BOB PACKWOOD,
Vice Chairman.

cc: Conrad K. Harper, Legal Adviser.

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON TAXATION,
Washington, DC, May 5, 1995.

Via Fax

The Hon. MARGARET MILNER RICHARDSON,
Commissioner of internal Revenue,
Washington, DC 20224

The Hon. LESLIE B. SAMUELS,
Assistant Secretary (Tax Policy), Department of the Treasury,
Washington, DC 20220

DEAR COMMISSIONER RICHARDSON AND ASSISTANT SECRETARY SAMUELS: In connection with the expatriation study that the staff of the Joint Committee on Taxation has been directed to undertake by June 1, 1995, I requested certain information from you in letters dated April 4, 1995, and April 7, 1995. I have reviewed the written response from Commissioner Richardson dated April 26, 1995, and the written response from Assistant Secretary Samuels dated May 2, 1995. The written responses do not fully address all of the issues set forth in my requests. Also, some additional questions have arisen as the Joint Committee staff has explored these issues further. Therefore, I would like to obtain additional information on the following issues:

Information related to the April 4 and April 7 requests and the responses thereto:

1. Questions 2 and 3 of the April 7 letter requested an assessment of the enforceability of the trust provisions under the various proposals. The Treasury response addressed the issue of liquidity, but it does not address the basic question of enforcement. How would the IRS attempt to identify the trust interests held by an expatriate? Would the Administration rely solely upon voluntary compliance to identify these interests? Would some kind of new information reporting obligations be imposed? If so, would this requirement be imposed on foreign trusts as well?

2. The April 26 IRS letter lists pending controversies under existing law. Item 6 of that letter, on page 11, describes a case involving an individual who appears never to have been a citizen of the United States. Therefore, he would not be subject to present-law section 877. The letter does not indicate the aspect of enforcement of current law to which this case pertains.

3. The April 26 IRS letter also describes another taxpayer controversy (item 7 on page 11), and state that "[t]he IRS recently accepted a settlement offer" in that case. Please provide us with the details of the settlement, including the amount of the proposed adjustment and the amount of the settlement, and some explanation of the merits of the issues in dispute.

Additional information:

1. As part of the study, we are required to analyze the issue of double taxation raised by the proposals. In this regard, we have the following questions:

a. Does the U.S. Competent Authority or the IRS in general have any experience in dealing with double taxation caused by section 877? If there have been no actual cases, please comment on the approach that U.S. Competent Authority would take in determining whether the United States would provide any relief if such a case is presented through the competent authority of a U.S. treaty partner. Please also indicate whether any other provisions of our treaties would provide relief from double taxation issues that arise in this context.

b. Please describe the experiences that the U.S. Competent Authority and the IRS have had in dealing with double taxation issues that arise when a treaty country, such as Australia or Canada, imposes a departure tax on a taxpayer who becomes a U.S. resident. If a U.S. person disposes of an asset that was subjected to a departure tax imposed by a foreign country, would the United States permit the taxpayer to credit the departure tax against his or her U.S. tax liability even though the foreign tax was not imposed on a realization basis under U.S. tax principles? In his testimony before the Oversight Subcommittee of the House Ways and Means Committee, Stephen Shay, former International Tax Counsel of the Treasury Department, indicated that the U.S. and Canadian competent authorities have dealt with a case involving certain U.S. offshore drillers. Please provide us with the details of that particular case.

c. Please indicate what type of double taxation relief (e.g., under certain provisions of our treaties, including "Mutual Agreement Procedures") would be available if the provisions of H.R. 981 or H.R. 831 were enacted, or if the election in S. 700 to defer the expatriation tax until the disposition of an asset is not made. Specifically, would a former citizen or resident who becomes a resident of a treaty country be eligible for assistance from U.S. Competent Authority for double taxation relief? Section 3.05 of Rev. Proc. 91–23 states that only taxpayers who are U.S. persons are eligible to apply for assistance from the U.S. Competent Authority. Would a former citizen or resident who was subject to the tax under proposed section 877A immediately prior to the relinquishment of citizenship or residence qualify as a U.S. person for purposes of Competent Authority relief? If not, would it help for the expatriate to file a protective claim at the same time as the tax imposed by section 877A is paid? If a former citizen or resident disposes of certain property subjected to expatriation tax within two years and the gain on the disposition is taxed by a foreign country at a 10 percent or greater rate, would the gain on the deemed sale be treated as foreign source income under section 865(g)(2)? If so, could the foreign taxes paid be carried back to offset the U.S. tax on the deemed sale?

2. The Administration proposal and the Moynihan bill (S. 700) would impose a tax on long-term residents who terminate their U.S. residency. How would the Administration attempt to identify such individuals for purposes of enforcing this provision?

3. Please provide the following:

a. The number of Form 1040 tax returns filed by individuals with foreign addresses in each of the last ten years. It is our understanding that 1040s filed by overseas taxpayers are separately filed with the IRS Service Center in Philadelphia and, therefore, we expect that this information can be easily obtained. If an accurate number of such returns filed is not available quickly, we would appreciate an estimate of the number of such returns filed annually. We also asked in our meeting on April 18, 1995, how returns filed by U.S. citizens residing abroad are selected for audit and how the audit rate for such returns compares to the audit rate in general. We would also like to obtain any information you have as to the impact that the enactment of section 6039E has had on the number of overseas taxpayers filing returns.

b. The number of departure certificates ("sailing permit") issued with respect to aliens departing the United States in each of the last ten years.

c. A copy of most recent tax return filed by the second individual mentioned on page 16 of the April 26 IRS letter.

I would like to obtain this information as soon as possible. If some of the information is available earlier than other information, I would like to receive whatever information is available as soon as possible. Due to the impending deadline, I would like to obtain all of this information no later than Friday, May 12. I also would like to meet with the relevant individuals from the IRS and the Office of Tax Policy within the next week to discuss the above issues. One of my staff will contact your office shortly to coordinate the meeting.

I recognize that some of the information that I have requested is subject to section 6103. Accordingly, pursuant to Code sections 6103(f)(2) and (f)(4)(A), I request access to the information I have requested above. Please indicate in any responses you prepare which portions of the response contain information subject to section 6103 restrictions. I have authorized all members of my staff to receive this information as my designated agents.

This document is a Congressional record and is entrusted to the Treasury Department and the Internal Revenue Service for your use only. This document may not be disclosed without the prior approval of the Joint Committee on Taxation.

I appreciate your cooperation in this matter.

Sincerely,

KENNETH J. KIES,
Chief of Staff.

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON TAXATION,
Washington, DC, May 16, 1995.

Via Fax

The Hon. MARGARET MILNER RICHARDSON,
Commissioner of Internal Revenue,
Washington, DC 20224

The Hon. LESLIE B. SAMUELS,
Assistant Secretary (Tax Policy), Department of the Treasury,
Washington, DC 20220

DEAR COMMISSIONER RICHARDSON AND ASSISTANT SECRETARY SAMUELS: In connection with the expatriation study that the staff of the Joint Committee on Taxation has been directed to undertake by June 1, 1995, I would like to obtain additional information on the following issues:

1. The present law tax treatment of an individual who obtains a certificate of loss of nationality ("CLN") several years (or more) after the commission of an expatriating act. According to the State Department, such individuals legally cease to be U.S. citizens as of the date of the expatriating act, even if they do not receive their CLN until a much later date. If such an individual were to request a refund of all income taxes paid as a U.S. citizen between the time of the expatriating act and the issuance of the CLN, what would be the IRS's position as to the appropriateness of such a refund? Does the IRS have any actual experience with this issue? We verbally requested this information from Joseph Guttentag, International Tax Counsel, who was present at our May 1, 1995, meeting with the State Department.

2. What, if any, changes were made to the procedures used in collecting tax from U.S. citizens living abroad following the General Accounting Office study of May 8, 1985? A number of recommendations were made in that study; for example, that the IRS should undertake to provide such individuals with an explanation of the tax filing requirements for U.S. citizens living abroad, particularly in instances where the individual has been identified as a potential nonfiller by the IRS's nonfiler and stopfiler programs. To the extent that such changes were made, what has been the effect on compliance in this area?

3. We would like to obtain the data used as a basis for the revenue estimate of the Administration's proposal. The letter we received from Assistant Secretary Samuels dated May 2, 1995, states (on page 3) that the Treasury Department obtained data from the Department of State listing expatriations since 1993, and that such data was used to derive the estimate that 24 wealthy individuals would expatriate each year. We understand that the Treasury estimate was derived by identifying a representative group of individuals who recently expatriated and examining the actual tax liabilities of these individuals. With respect to these individuals, we would like to obtain their names, social security numbers, most recent tax returns, and the date on which they expatriated. To the extent that any of these individuals has not yet expatriated, we would like to know the basis for Treasury's conclusion that they were likely to expatriate. We would also like to know whether the Treasury's revenue estimate includes an estate tax component (i.e., anticipated revenue from U.S. estate taxes imposed on individuals who would expatriate but for the proposed tax, and thus are still U.S. citizens when they die).

4. In our May 5 letter, we requested information on provisions of our existing treaties, other than "Mutual Agreement Procedure", that would alleviate double taxation that arises under section 877 (question 1.a. under "Additional information"). The letter from Commissioner Richardson dated May 12, 1995, confirms that there are other treaty provisions to relieve double taxation in this context. Please provide a sample listing of such provisions under U.S. tax treaties that are currently in force.

5. In our May 5 letter, we requested information on double taxation relief that would be available for taxpayers who become residents of a treaty country if the provisions of H.R. 981 or H.R. 831 were enacted, or if the election in S. 700 or H.R. 1535 to defer the expatriation tax until the disposition of the tax on an asset is not made (question 1.c. under "Additional information"). Commissioner Reichardson's May 12 letter confirms that relief would be available under the "Mutual Agreement Procedure." Please explain the position that the U.S. competent authority would take with respect to a case of double taxation of a former U.S. citizen resident in a treaty country. It would be helpful if you can provide examples of analogous cases where individuals have applied for competent authority assistance under similar circumstances.

Due to our impending deadline, I would like to obtain this information as soon as possible, but no later than Monday, May 22, 1995.

I recognize that some of the information I have requested may be subject to section 6103. Accordingly, pursuant to Code sections 6103(f)(2) and (f)(4)(A), I request access to the information I have requested above. Please indicate in any responses you prepare which portions of the response contain information subject to section 6103 restrictions. I have authorized all members of my staff to receive this information as my designated agents.

This document is a Congressional record and is entrusted to the Treasury Department and the Internal Revenue Service for your use only. This document may not be disclosed without the prior approval of the Joint Committee on Taxation.

I appreciate your cooperation in this matter.

Sincerely,

KENNETH J. KIES,
Chief of Staff.

U.S. DEPARTMENT OF STATE,
Washington, DC, April 28, 1995.

Hon. ROBERT PACKWOOD, *Vice Chairman,*
Joint Committee on Taxation,
United States Senate.

DEAR MR. CHAIRMAN: I am writing in response to your letter of April 25, 1995, to the Secretary concerning the Joint Committee on Taxation's study of the President's proposal to impose a capital gains tax on U.S. citizens and certain U.S. residents who expatriate. In that letter you asked that we expedite responses to two prior letters from Kenneth J. Kies, Chief of Staff of the Joint Committee, that meetings be set up and that a liaison with Committee staff be appointed.

Our ability to respond to certain of your staff's previous requests has been delayed by the need to ensure compliance with any applicable requirements of personal privacy. With your request on behalf of the Joint Committee on Taxation, we now are confident that we may proceed to release this information to the Committee. As you noted, we have arranged to brief the staff on the questions raised in the April 4, 1995, letter next Monday, May 1. My understanding is that the briefing will cover all of the questions raised and that the appropriate Department officials will remain available to the Joint Committee staff thereafter to answer any follow-up questions.

The April 20 letter from the staff asks that the Department identify by name individuals who have renounced their citizenship or expressed an intent to do so in 1994 or 1995, and asks that the Department review a list of the 400 richest Americans (the "Forbes 400") and identify any who have given up their citizenship in the last ten years. The list of the names of individuals who were issued Certificates of Loss of Nationality in 1994 and 1995 is attached. Although persons who relinquish U.S. citizenship are not required to state their motivation, they frequently represent to us that they are relinquishing citizenship for family reasons or in response to host country pressures.

These lists include only persons to whom we have issued Certificates of Loss of Nationality. We have no accurate way of providing information about persons who have merely expressed an intention to renounce, whose names were also requested. We may be able in time to provide additional names of persons who have renounced but to whom we have not yet issued a Certificate of Loss of Nationality. We will discuss how best to proceed on this aspect of the request at the May 1 meeting.

We also wish to discuss on Monday how best to address your staff's needs in response to its question to identify anyone among the 400 wealthiest Americans who has renounced citizenship in the last ten years. The list provided by the Committee staff does not provide dates of birth, and in some cases provides only general names, such as the "Barbey family, California, et al." Even with a broad and expensive search for the few (if any) "Forbes 400" who may have given up their citizenship, we could neither expect the results to be accurate nor could we be able to confine the search to the files of specifically identified individuals.

The Department has a long-standing policy of protecting information it acquires about individuals in the administration of its consular responsibilities. It generally refuses to confirm or to deny an individual's citizenship status in response to inquiries from third parties.

You also requested that a Department official be assigned to act as liaison with Mr. Kenneth Kies, the Joint Committee on Taxation's Chief of Staff. Ed Betancourt of the Bureau of Consular Affairs, 202–647–3666, will be the principal point of contact.

Sincerely,

WENDY R. SHERMAN,
Assistant Secretary Legislative Affairs.

Enclosures: 1. Correspondence returned [not reprinted here]; and 2. Other documents.

NAMES OF PERSONS WHO WERE SUBJECTS OF APPROVED CERTIFICATES OF LOSS OF U.S. CITIZENSHIP DURING 1994

Abbott, Richard
Abbott, Ruth
Aboitiz, Annabelle
Abraham, David
Adkins, Peggy
Ahman, Jane
Ahn, Mieja
Aizcorbe, Alexandra
Albayati, Sabih
Albrizzi, Alexander
Alburger, Robert
Amdal, Hanne
Andersen, Katharina
Andrews, Peter
Aquarone, Rene-Christophe
Asulin, Gedalin
Attard, Joanne
Aubry, Alan
Austin, Roswell
Bahk, Keith
Bang, Thomas
Barnette, Kathleen
Barta, Richard
Barth, Stanley
Bartlett, Renate
Bary, Svenja
Batt, Terry
Beavan, Bonnie
Beguin, Margaret
Benfield, Carmen
Bergendahl, Carl
Bergli, Lloyd
Bernard, William
Berner, Herman
Beusted-Smith, Sheila
Bishop, Martha
Blaier, Frida
Blut, Almut
Bodganovich, Robert
Boisvert, Joseph
Bonnefoy, Philippe
Borsari, Robert
Bowles, Michael
Braithwaite, Catherine
Braithwaite, William
Braun, Beatrice
Braunschvig, Benjamin
Brehe, Frank
Brehe, Mary
Breinl, Yvonne
Bridges, Mark
Brindley, Friedrich
Brockebank, William
Bronk, Richard
Brown, Elizabeth
Brown, Jr., Howard
Browne, Gunborg
Bryceson, Deborah
Buck, John
Bugeja, Stephen
Buhler, Walter
Bullington, Jennifer
Bullough, Melinda
Burger, Barbara
Burger, Winton
Burke, Albert
Burke, Kelly
Bushery, James
Byers, Jennifer
Byon, Yeon
Calhoun, Michael
Calhoun, Minna
Cardenas, Ronnie
Carlsson, Roger
Carmin, Richard
Carney, John
Carter, Gerta
Casey, Jr., Harold
Cates, Richard
Cha, Victor
Chandler, Robert
Chang, Jaewoo
Chang, Jason
Chang, Julian
Chao, Alfred
Chapman, Bernard
Cheigh, Okhi
Cheng, Shin
Chew, Christopher
Chia, Edward
Chia, Hsien-Hui
Chia, Winifred
Chiew, Lillian
Chin, Gary
Cho, Byung
Cho, Wonjae
Cho, Young
Choate, Abigail
Choi, Eliot
Choi, Yong
Choksy, Lois
Chon, Adela
Chong, Sayong
Choo, Helen
Choo, Junghyum
Christenson, Clarence
Christenson, Lowell
Christenson, Sheila
Christiana, Marguerite
Chu, David

Chung, Jim
Chung, Sang
Chung, Tae
Chung, Won
Cleveland, Sinclair
Cochran, Chun
Coe, Angela
Cohn, Steven
Collette, Jr. Jesse
Costa, James
Coufos, Alexia
Cox, Cannon
Cox, Victoria
Crounse, Kenneth
Curmi, Brian
Czarnecki, Peter
Dahlberg, Robin
Dart, Robert
Davis, High
Day, Lois
Day, Peter
De Bergendal, Thomas
De Glucksbierg, Caroline
Deane, Markus
Del Grande, Louis
Del Grande, Martha
Devanney, David
Dick, Norma
Dingman, Michael
Doblinger, Manfred
Dorsey, Dorothy
Doughty, Robin
Duncan, Erin
Easterling, Melanie
Eckart, Marie
Eddis, Christopher
Edmonds III, Francis
Effron, Jack
Ellis, Carmen
Ellis, Nicole
Elzie, Patrick
Eykamp, Clifford
Ezra, Regina
Fadl, Alexandra
Fischer, Patricia
Foxx, Robert
Franks, Rose
Frans, Mary
Frans, Tobias
Frieler, Dawn
Fuerst, Christine
Fuerst, Richard
Fujisawa, Yoshinori
Fusco, Marilyn
Gallagher, John
Gallucci, Frank
Gallucci, Rita
Garner, Helmut
Gilbert, Bettina
Goessing, Diane
Goodwin, Patrick
Gorman, Jacqueline
Gospodinoff, Eva
Gotoh, Hiroyuki
Gould, Bradley
Graef, Evelyn
Gray, Keith
Greer, Jason
Greer, Laurie
Gregory, Elinor
Groeger, Hans
Groeger, Ruth
Grolman, Aubrey
Guld, Barry
Gurch, Anneliese
Gut, Marcel
Gwon, Hyo
Gyll, Robert
Hagan, Claudia
Hahn, Amanda
Hahn, Carol
Hahn, Margit
Hahn, Young
Halkjaer, Gerhard
Haller, Ilse
Hallgrimson, Daniel
Halmstad, Roger
Hampton, Bruce
Hampton, Charles
Hamsun, Vanja
Han, Min-Han
Handy, Myoung
Hanson, Wendy
Harkins, Pat
Hausler, Ludwig
Haynes, Christian
Heise, Stephany
Hendele, Yvonne
Hendricks-Engstrom, Barbara
Hertweck, Maria
Heule, Dorothy
Heywood, James
Hill, Stephanie
Hilton, Claudia
Hirotsu, Debra
Hitsman, Jeffrey
Ho, Arthur
Ho, Jaime
Holland, Ouanah
Holman, Diana

Hong, Choo
Hopkins, Roy
Hopwood, Beryl
Howard, Glenn
Huh, John
Hunt, Lloyd
Hwang, Kuy
Iacobucci, Nancy
Idebrandt, Erik
Inachin, Kyra Tatjana
Iossifoglu, Nora
Ishikawa, Takeshi
Ito, Eriko
Jackson, Susan
Jacobson, Ronald
Jadden, Audrey
Jadden, William
Jang, Hwee
Janka, James
Jelinek, Max Heinrich
Jespersen, Anne-Lise
Jo, Insook
Joglar, Rafael
Johnson, Marion
Johnson, Nels
Johnson, Rebeca
Jones, Audrey
Jones, Franklin
Jones, Jimmie
Jones, Leonore
Joseph, Anna
Joyner, Gregory
Jun, Younshil
Jurcenko, Nikolaj
Kalkman, Janet
Kaneko, Mariko
Kang, Harvey
Kang, Youngkook
Kangas, Katherine
Katono, Nao
Kelsall, Barbara
Kelsall, Dennis
Kenneally, Joseph
Kern, Gertrude
Keulen, Susan
Kickers, Janette
Kim, Bong
Kim, Chang
Kim, Chong
Kim, Eui
Kim, Grace
Kim, Hahr
Kim, Hee
Kim, Helen
Kim, Hyun
Kim, Il
Kim, In
Kim, Jae
Kim, James
Kim, Jessica
Kim, Jung
Kim, Junghee
Kim, Kathryn
Kim, Keun
Kim, Maggie
Kim, Moses
Kim, Richard
Kim, Sang
Kim, Steve
Kim, Wanshin
Kim, Yong
Kim, Yong
Kim, Young
Kirechiev, Emil
Knutzen, Caroline
Knutzen, Klaus
Koh, Ik–leng
Koh, James
Kolb, Jane
Kolb, Otto
Kong, Sarina
Kroos, Patrick
Kulukundis, Stathes
Kumagai, Ichiro
Kuo, William
Kyong, Remni
Lam, Alexa
Lam, Fred
Lambert, Doris
Lambert, Joseph
Lane, Arnold
Langanke, Lisa
Larson, Bruce
Lawrence, Harding
Lawrence, Mary
Lee, Chinho
Lee, Chul
Lee, Chun
Lee, Eugene
Lee, Haeja
Lee, Janet
Lee, Joung
Lee, Monica
Lee, Pamelia
Lee, Sook
Lee, Yong
Lee, Yuan
Leong, Bing
Leong, Florence
Lepoutre, Roselyne

Levy, Edith
Lifhtbourne, Elizabeth
Lim, Beng
Lim, Howard
Lim, Jong
Lim, Kap
Linclon, Ruth
Lindquist, George
Litehiser, Jay
Little, David
Liu, Chao
Locke, Thomas
Lonergan, Ann
Lonergan, Simon
Loorits, Aleksander
Loponen, Irja
Lubin, Thomas
Lucky, Edward
Lucky, Verona
Luk, Henry
Lundsager, Soren
Lundtofte, Hanne
MacDonald, Lydia
MacDonald, Maynard
Macke, Linda
Mallick, John
Marks, Monica
Martensen, Dirk
Martineau, Jean
Marvel, Jr. William
Mateer, William
Matthews, Ian
Mayo, William
McDaniel-Odeudall, Claudia
McDonald-Buesing, Ursula
McDonald-Buesing, Ursula
McGanty, Daniel
McGowan, Michael
McGrath, William
McKoloskey, Terry
Meilak, Joseph
Menuhin, Yehudi
Micallef, Anthony
Mifsud, Lisa
Mills, Terry
Min, Jin
Mitchell, William
Montague, James
Morgan, Nina
Moser, Michael
Moyer, John
Muscat, Jeffrey
Myrans, Katherine
Naess, Michael
Nagakura, Mochiyashu
Nahmias, Marina
Nashed, Naguib
Negroponte, Catherine
Nomura, Timothy
Nordmann, Thomas
Norlund, Margaret
Nyitrai, Nina
O'Mara, Michael
O'Nan, Kimberly
Odfjell, Helene
Oh, Seyoung
Ohme, Joachim
Ohme, Margarethe
Oliver, James
Onoda, Masami
Oppenheimer, Paul
Over, Paul
Paez, Ramon
Paik, James
Pak, David
Park, Chang
Park, Diana
Park, Edward
Park, Ka
Park, Karen
Paulon, David
Paw, Bonnie
Pearson, Carol
Perkins, Lore
Perry, Winthrop
Petritz, Mary
Pettit, Anne
Pidun, Anita
Pierce, David
Piiparinen, Impi
Pixley, Ralph
Popp, Angela
Portelli, Sharon
Prenn, Veronica
Priegnitz, Rudolf
Proctor, Steven
Pugh, Michael
Pulver, George
Quimby, William
Raffaele, Melanie
Rahn, Margreth
Ralph, David
Reay, Samantha
Rediker, Dolly
Reed, Barbara
Riedel, Walter
Reiser, Michelle
Riesser, Sigrid
Renteria, Roland
Richardson, Mary

Richetts, Anne-Margrethe
Roberts, Donald
Roemer, Diane
Roger, Raymond
Rogo, Steve
Romann, Kathleen
Root, Richard
Roseli, Ximena
Rosen, Michael
Rothe, Maxine
Russel, James
Russon, Michael
Ryu, Edwin
Sackett, Lee
Sackett, Linda
Saint-Phalle, Therese
Santa Barbara, Pamela
Savina, Aili
Scachinger, Hildegard
Schmidt, Horst
Schroth, Angelita
Schumann, Peter
Schwartz, Solly
Schwarz, Chrissie
Seidl, Josef
Selby, Corine
Shattan, Colin
Sheehan, Sheila
Sheehan, William
Sheldon, Jacqueline
Shen, Chun
Shim, Jae
Shin, Jung
Shing, Sau Ping
Shing, Wing
Sierz, Hannelore
Siguas, Eija
Simes, Erica
Simon, Raymond
Simset, Vanessa
Sissener, Pal
Smit, Susanne
Smith, Donald
Smith, Gail
Smith, Maureen
Sol, Anne
Song, In
Song, Joyce
Song, Yong
Song, Young
Spriggs, Martha
Stancioff, Ivan
Stebbins, James
Steffen, Claudia
Steponaitis, Erika
Stewart, Hilde
Stivers, Amelia
Stockholder, Katherine
Straker, Louis
Studer, Ida
Sturdza, Irene
Suh, Peter
Sultana, Charles
Sumardi, Snowerdi
Swiney, Sean
Sylwester, Jean
Sylwester, John
Szolga, Laszlo
Taguchi, Misao
Takagi, Romy
Takara, Yukiyo
Talmon-L'Armee, Werner
Tanaka, Teruo
Tang, Jack
Tarshish, Daniel
Taylor, Ross
Theodoli-Brashci, Maria
Thollembeek, Monica
Thompson, Yong
Trout, Jr. Monroe
Tsau, Ching
Tseretopoulos, Constantine
Ueda, Iku
Van Der Woude, Reinier
Vann, Kenneth
Vasquez, Gina
Venit, James
Verin, Richard
Von Einsiedel, Hildebrand
Von Einsiedel, Rosemarie
Vowe, Kathleen
Walker, John
Walker, Michael
Walker, Roxie
Wallace, Sharon
Walton, Dan
Wang, In
Warnick, Cuanitta
Warren, Christina
Waters, Valerie
Watts, Brian
Weinberg, Ronald
West, William
Wheeler, Robert
Wieler, Harold
Wiemann, Daniel
Williams, John
Williams, Jones
Williams, Lawrence
Williams, William

Willis, Russell
Wilson, Anthony
Winding, Ruth
Wolf, Margat
Wrinkle, Timothy
Xerri, Charlton
Xerri, Kevin
Yap, Hwee
Yi, Yun
Yoneda, Hiroichi
Yoo, Agnes
Yoo, Danielle
Yoo, Sungsoo
Yoon, Tol
Yoshioka, Michiko
Youn, Jung
Young, Ambrous
Yu, David
Yuan, Lily
Yun, Jang
Zammit, Romana
Zannin, David
Zimmerman, Melinda
Zimmerman, Robert
Zupappenheim, Alexandra

NAMES OF PERSONS WHO WERE THE SUBJECTS OF CERTIFICATES OF LOSS OF U.S. CITIZENSHIP DURING PERIOD 1/1/95 TO 4/26/95

Abert, Gerda
Acteson, Marilyn
Ahn, Chunghee
Ahn, Moses
Ahn, Youngok
Albright, Sandra
Ambros, Dieter
An, Duck
An, In
Arnold, Myong
Atkinson, James
Attard, Jenniefer
Bae, Kenney
Bae, Kenny
Bagger, Karen
Bailey, Chong
Baker, William
Balch, Chong
Banks, Samuel
Bankson, Beverly
Bankson, Douglas
Beltran, Paul
Bernstein, Joseph
Besso, Marc
Blackwell, Bruce
Blake, Victor
Bogdanovich, Joseph
Bowden, Beatrice
Bowden, Gordon
Brennan, Paul
Byung, Hee
Cagnard, Lars
Camilleri, Angel
Carter, Alain
Castall, Richard
Cha, Jung
Chandler, David
Chang, Hong
Chang, John
Chang, June
Chang, Jungyol
Chang, Nae
Chang, Paul
Chang, Sang
Chanhry, Christel
Cheng, Su
Chey, Anthony
Chi, Isaac
Chi, Mina
Chia, Lawrence
Chin, Peter
Chin, Sung
Cho, Chang
Cho, Jae
Cho, Joon
Cho, Manny
Cho, Mikung
Cho, Youngsik
Choe, Byung
Choi, Dosoung
Choi, Jenny
Choi, Jung
Choi, Min
Choi, Min
Choi, Robert
Choi, Won-Sup
Chong, Kil
Choo, Ju
Chough, Sungjung
Choung, Michelle
Choy, Arthur
Choy, Yoon
Chun, Soon
Chung, Il-Sung
Chung, Jane
Chung, Kyu
Chung, Kyung
Chung, Jeanhyun
Coble, Tammt
Collette, Mary
Creaturo, Carol
Cruz, Teodoro
Darden, Dorothy
Darden, Stephen
Dart, Kenneth
De Santo, Renata
Dennis, Jeffrey
Donovan, James
Downes, Shirley
Dunalp, Dorothy
Dutt, Mohan
Ebner, Gail
Ekbatani, John
Enoch, Lorraine
Enright, James
Enriquez, Porfirio
Errington, Anthony
Fabi, Johann
Fabi, Maria
Feininger, Tomas
Foxley, Alejandro
Francisco, Nany
Gambill, Robert
Golmohammadi, Haleh
Haac, Norman
Hahn, Theodore
Ham, Jun
Han, Grace
Han, Jang
Han, Sang

Harris, Haruko
Hartvikson, Robert
Haugland, Magne
Heaslip, Anne
Heinz, Barbro
Helmen, Denise
Henn, Ivonne
Herman, Leroy
Herrmann, Walter
Herzke, Walter
Higgs, John
Ho, Lewis
Hofmann, Monika
Houold, Lucy
Hwang, Joseph
Hwang, Sang
Hyun, Yang
Im, Suk
Ip, Maria
Ip, Moon
Jacobs, Clyde
Jacobs, Patricia
James, Julia
Jamison, Sun Ye
Jang, Frank
Jasinski, Harriet
Jones-Schmidt, Leslie
Joyce, Yi
Jung, Eui
Kang, Chang
Kang, Chung
Kang, Dongsoo
Kang, Helen
Kang, In
Kang, Joseph
Kang, Judy
Kang, Timothy
Kang, Youn
Kay, Angela
Kellar, Stephen
Khwarg, Dong
Kieffer, Diana
Kim, Andrew
Kim, Barnabas
Kim, Byong
Kim, Charles
Kim, Chin
Kim, Chong
Kim, Choon
Kim, Daniel
Kim, Daniel
Kim, Dok
Kim, Duke
Kim, Edward
Kim, Ezra
Kim, Gerald
Kim, Helen
Kim, Holim
Kim, James
Kim, James
Kim, Jenny
Kim, Jinho
Kim, John
Kim, John
Kim, Joseph
Kim, Joy
Kim, Jung
Kim, Kay
Kim, Keun
Kim, Kwang
Kim, Mi
Kim, Michael
Kim, Moses
Kim, Myung
Kim, Pil
Kim, Pter
Kim, Sam
Kim, Sang
Kim, Seung
Kim, Shinja
Kim, Song
Kim, Soon
Kim, Sung
Kim, Sunho
Kim, Susan
Kim, Susie
Kim, Won Hee
Kim, Yea
Kim, Young
Kim, Yung
Kim, Linda
King, Gary
King, Jacqueline
Ko, Grace
Ko, Young
Koffman, Myrna
Koo, Esun
Koo, Leah
Koslic, Malinda
Krayenbuhl, Christopher
Ku, Hee
Kwak, John
Kwak, Rose
Kwon, Ikhwan
Kwon, Jaehyon
Kwon, Myra
Kwon, Nam
Kwon, ho
Khwarg, Edward
La Pene, Hitoshi

Laessign, Lana
Lam, Anthony
Landes, Ivan
Laurie, Arlie
Law, Helen Hong
Lee, Bang
Lee, Bun
Lee, Chan
Lee, Dong-Ju
Lee, Eue-Jae
Lee, Hak
Lee, Helen
Lee, Hwaji
Lee, Ik
Lee, Inchul
Lee, Jae
Lee, Jong
Lee, Kil
Lee, Kyong
Lee, Kyoung
Lee, Myung Ja
Lee, Ok
Lee, Sehoon
Lee, Suja
Lee, Sung
Lee, Terry
Lee, William
Lee, Yong
Lee, Young
Liley, William
Lindholm, Joan
Liu, Chin-Hsin
Liu, Lo-Chung
Machurek, Maria
Mackerron, Calvin
Majorsi, Millian
Manello, Therese
Marloew, Richard
Martin, William
Martin, Kevin
Maryoz, Elizabeth
Mathysen-Gerst, Nicole
Matley, Nicolasina
Matray, Mark
Maura, Virginia
Mifsud, Carmen
Moeller, Manuela
Montague, Montgomery
Morse, Jerry
Mura, Rosemarie
Nakanishi, Tami
Nam, Haejung
Nashif, Taisir
Nielsen, Maria
Nilsson, Klara
No, Gi
Noh, Seijon
Nordin, Britt-Inger
Novotny, Michelle
Nye, Paul
O'Donnell, Charles
Oestreicher, James
Oh, Stephanie
Oh, Yon
Ong, Florence
Owen, Ruth
Paik, Jung Sook
Pak, Charles
Pak, Christine
Pak, In
Pak, Ji
Park, Byung
Park, Byung
Park, Chan
Park, Jane
Park, Jeanne
Park, Jeehyun
Park, Jeong
Park, Jong
Park, Kee
Park, Mi
Park, Sang
Park, Wong-Hong
Parks, James
Pasley, Gary
Persson, Kathleen
Pfeiffer, John
Phillips, William
Polonsky, Leonard
Portelli, Joseph
Poston, Gail
Raines, Raymond
Rector, Gary
Redmond, Tok
Rha, Myung
Ribeira, Ernest
Riva, John
Rivera, Patricia
Roengpithya, Viphandh
Rogers, Elisabeth
Rogers, Franz
Rosen, Andrew
Rynevicz, Lilo (Liesel)
Sakurai, Giesela
Saliba, Eric
Saliba, John
Sanchez, Sandra
Saunders, Betty
Scherer, Franzistra
Schlosshanm, Bodo Dieter

Schmidt, Jeffrey
Schmueckle, Karle
Schneider, Gerlinde
Schnobrich, Timothy
Seidler, Eleanor
Sendele, Hermann
Seong, Eun
Seoug, Chong
Shaffer, Sally
Shin, Ho
Shin, Hogang
Shin, Jae
Shin, Mina
Shin, Theresa
Shin-Davis, Kyung
Shinn, Sang
Shon, Cynthia
Sihn, Paul
Skipwith, Lee
Slepian, Michael
Smauelson, Gudrun
Smith, Christopher
Snisky, Michele
Son, Sarah
Song, Jane
Song, Joon
Song, Won
Sonn, Stephen
Spargo, Alan
Spear, Chun
Sprecht, Dieter
Steiner, Henry
Stine, Gregory
Stormont, Denys
Stubits, Brigitte
Suh, Harold
Synn, Byounghi
Szypula, Emma
Taylor, Andrea
Tharaldsen, Jervid
Thomas, Carrie
Tinnerman, George
Townshend, Elizabeth
Urbach, Karina
Urquizu, Yolanda
Van Riet, Lieven
Van Wynen, Robert
Voegele, Frederick
Voegele, Hedy
Wang, Ki
Watt, William
Wee, Shin
Weiss, Insuk
Weiss, Lillian
Wilson, James
Winkler-Vinjuleov, Juliana
Winter, Ingrid
Winter, Werner
Wise, Richard
Wolson, Young-Mi
Won, Joung
Woo, Heeju
Wood, James
Wu, Jin
Yang, Agnes
Yoo, Dong
Yoo, Hang
Yoo, In
Yoo, Sung
Yoo, Tal
Yoon, Chang
Yoon, Charles
Yoon, Young
You, Jong
Young, Michelle
Yu, Albert
Yun, Yong
Ziegler, Tor

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Washington, DC, April 26, 1995.

KENNETH J. KIES, Esq.,
Chief of Staff, Joint Committee on Taxation, Congress of the United States, Washington, DC 20515

DEAR MR. KIES: This is in response to your letters of April 4 and April 7, 1995, in which you requested certain information regarding the President's proposal to impose a tax on U.S. citizens and residents who expatriate. Assistant Secretary Samuels will address some of those matters in a separate letter. I will address your inquiries from the perspective of the Internal Revenue Service.

Pursuant to section 6103(f)(2) and (f)(4)(A) of the Internal Revenue Code of 1986, this letter contains tax return information (which is underlined). I emphasize that some of the information provided contains extremely sensitive data developed from cases under examination, appeals or litigation. Any disclosure of this information (even to the taxpayers involved) is subject to the limitations of section 6103 and could undermine the Government's position in these cases.

APRIL 4, 1995 LETTER

QUESTION 1. PROBLEMS WITH CURRENT LAW

A. Income Tax—Sections 877 and 7701(b)(10)

Our experience in administering and enforcing section 877 is that it is a provision of limited scope that can be easily avoided and is difficult to enforce. Our views are consistent with others who have reviewed this area. In a 1991 report on the taxation of expatriates, the Association of the Bar of the City of New York concluded that section 877 cannot be administered in a way that effectively collects income tax:

Simply put, the current provisions as to expatriates do not work. They conflict with a few treaties; they are somewhat inconsistent; they require a determination of tax avoidance motive; and even when they apply, they are difficult to police.[1]

The New York City Bar recommended that the United States adopt a Canadian-style system to impose tax whenever an individual ceases to be a U.S. citizen or resident taxpayer. This system would treat the individual as disposing of any assets at the time of expatriation.[2]

In this regard, it is noteworthy that Congress has indicated that the scope of existing section 877 should be reexamined, especially on the issue of whether an expatriate should pay tax on foreign gains that accrued during U.S. residence. In 1984, Congress enacted section 7701(b)(9), subsequently renumbered 7701(b)(10), which extended section 877 to certain lawful permanent residents (*i.e.*, green card holders) who move in and out of the United States. The Conference Committee's explanation of the provision stated:

Congress extended [section 877 to green card holders] solely because of the clarity of that body of law; *Congress believed that those rules should be reexamined in the future (especially to the extent that those rules allow the subsequent disposition of foreign assets held during U.S. citizenship or residence free of tax)* [emphasis added].[3]

There are at least three fundamental problems with section 877. First, it requires proof of a tax avoidance motive before it applies. Second, it only applies to income from U.S. source that is earned or realized within a 10-year period following the date of expatriation. Third, the provision poses a difficult enforcement challenge because it requires continued monitoring of taxpayers and their income long after they have departed from the United States.

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[1] *See*, Association of the Bar of the City of New York, "Report on the Effect of Changes in the Type of United States Tax Jurisdiction over Individuals and Corporations," Tax Notes, Nov. 1, 1993 (1991) (New York City Bar).

[2] *See also* David Zimble, "Expatriate Games: The U.S. Taxation of Former Citizens," Tax Notes, Nov. 1, 1993 at 617 ("Even if the Code's antiabuse rules apply, their effect may be minimal because, in general, these rules affect only the taxation of U.S. income and assets . . . and because it may be possible to convert or defer most U.S. source income or taxable transfers of U.S. situated assets to avoid the impact of the antiabuse rule"); Langer, The Tax Exile, 1993–94, xvii ("The U.S. government's anti-expatriation rules, directed at those who abandon U.S. citizenship to escape taxes, are like a toothless paper tiger—all growl and no bite").

[3] H.R. Rep. No. 861, 98th Cong. 2d Sess. 967 (1984) ("1984 Conference Report"). This language also appears in the Joint Committee's explanation of the 1984 Act. *See* Jt. Comm. on Taxation, General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984 at 465 ("1984 Blue Book").

1. Tax avoidance motive.

Section 877 does not apply unless one of the principal purposes of the taxpayer's loss of citizenship was to avoid U.S. tax. If the IRS establishes that expatriation may have substantially reduced the expatriate's overall tax burden, including U.S. and applicable foreign taxes, section 877(c) provides that the burden of proving the absence of a principal purpose is on the taxpayer. While it is helpful for the IRS that the taxpayer bears the burden of establishing lack of tax avoidance motive, the statute does not relieve the IRS from having to rebut the taxpayer's arguments supporting lack of tax avoidance motive.

In order to meet our own burden of proof in disputing the taxpayer's allegation of lack of tax avoidance motive, the IRS generally must investigate the taxpayer's personal motivations regarding expatriation, compile family histories, and examine the tax regime of the new country or countries of residence. Such an examination is tedious and requires the cooperation of taxpayers who no longer live in the Untied States and who generally are no longer otherwise subject to U.S. law.[4] Recent controversies in which tax motivation was a problem for the IRS are described below (*e.g.*, ———).

In *Furstenberg* v. *Comm'r*, 83 T.C. 755 (1984), the Tax Court made it easier for the taxpayer to establish lack of tax avoidance purpose (and, therefore, more difficult for the IRS to establish tax motivation). In 1975, Cecil von Fursterberg saved over $5 million in U.S. taxes by relinquishing her U.S. citizenship. In a 1984 decision, the Tax Court, adopting the principal purpose standard set forth in *Dittler Bros., Inc.* v. *Comm'r*, 72 T.C. 896 (1979),[5] found that Ms. Furstenberg was not subject to U.S. tax under section 877 because tax avoidance was not one of her "first-in-importance" purposes. Establishing a taxpayer's first-in-importance motivation is especially difficult when, like Ms. Furstenberg, the taxpayer asserts attorney-client privilege to prevent the IRS from learning the nature of her discussions with her tax advisor.

The tax motivation requirement further complicates the administration of section 877 because that section only applies if the IRS actually examines each taxpayer to whom it may apply. Taxpayers rarely admit tax avoidance.[6] We understand that taxpayers are routinely advised not to volunteer to pay tax under section 877.[7] Indeed, we are not aware of any taxpayers who have voluntarily filed returns indicating that they are subject to section 877. Thus, the operation of section 877 requires the IRS to detect expatriates with potential section 877 liability, conduct an examination, successfully sustain the contention that there was tax avoidance, and assess and collect a tax deficiency.

2. Limited scope.

A second major problem with section 877 is that it only applies to a limited category of income and is easily avoided. Section 877 taxes only certain U.S. source income that is earned or realized within ten years of expatriation. Thus, there are at least two ways to avoid the provisions of section 877 even when a tax motivation is present—by manipulating source and manipulating timing.

Current law allows an expatriate with foreign income to avoid U.S. tax on such income, even if it economically accrued while the taxpayer was a U.S. citizen. For example,———.

The Tax Reform Act of 1986 added new section 877(c) to provide that gain on the sale of property whose basis is determined by reference to the basis of U.S. property will be treated as gain from the sale of U.S. property. This provision was designed to prevent tax-motivated expatriates from avoiding U.S. tax by making a tax-free exchange of U.S. property for foreign property.[8]

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[4] *See* Ross, "United States Taxation of Aliens and Foreign Corporations," 22 Tax L. Rev. 277, 346 (1967) ("The problems of enforcement with respect to expatriated Americans [under section 877] will probably be substantial. The key statutory concepts are largely based on a state of mind, and evidence will not be easily available.")

[5] Prior to 1985, section 367 only applied to the outbound transfer of assets to a related foreign corporation if one of the principal purposes of the transfer was to avoid U.S. tax. However, in *Dittler Bros*, the Tax Court stated that the government must demonstrate that tax motivation was a "first-in-importance" purpose. In response to this case and subsequent cases, Congress decided to eliminate tax motivation from section 367 in 1984. *See* 1984 Blue Book, *supra* at 427.

[6] However, the tax literature suggests that many expatriates may not, in fact, pay significant foreign taxes after their expatriation. Many expatriates either take up new residences in true tax havens (e.g., ———) or in high-tax jurisdictions that have special tax incentives for wealthy immigrants (*e.g.*, ———). *See* Langer, *supra* at xvii. This book contains fifty pages describing countries in which a tax expatriate may reside without incurring significant local taxes, including Australia, Britain, Canada, Ireland, Israel, and Switzerland. *Id* at 124–74.

[7] *See* Langer, *supra* at 99 (section 877 does not appear to be self-executing).

[8] H.R Rep. No. 426, 99th Cong. 1st Sess. 43 (1986).

Section 877(c), however, does not prevent taxpayers from avoiding section 877. Even after the enactment of that provision, departing taxpayers can generally avoid U.S. tax even on their U.S. source income by restructuring their activities to earn foreign source income in connection with the sale of U.S. assets. One technique that practitioners recommend to accomplish this goal is for the taxpayer to first expatriate and then to contribute U.S. assets into a foreign corporation. The foreign corporation sells the U.S. assets and distributes the proceeds of the sale to the expatriate. Practitioners argue that dividend distributions are not subject to existing expatriation rules because they are from a foreign source.[9] The IRS has encountered situations where taxpayers avoid section 877 by using similar techniques.

Many other techniques appear to achieve conversion of the source of income. For example, some practitioners have explained how foreign trusts can also be used to avoid the application of the income, estate and gift tax expatriation rules. *See* Gross, "Expatriation and Foreign Trusts," 5 Int'l Tax Journal 132 (1978) ———. *See also,* Postlewaite, International Individual Taxation 161–62 (1980) (discussing various expatriate planning opportunities).

In addition, section 877 can be avoided by waiting ten years before selling U.S. assets or by employing techniques to defer the receipt of income.[10] Taxpayers may have the beneficial use of their gains without paying U.S. tax by borrowing against U.S. assets until the 10-year period expires.

Practitioners regularly market new techniques to avoid section 877. For example, a recent seminar brochure states that the instructor will "be revealing many unpublishable facts about second citizenships and clever 'how-to' points on legal tax avoidance. He will be exposing many legal loopholes which if widely known would soon be closed."[11] Therefore, there may be other techniques that the IRS has not yet identified.

3. Post-departure enforcement.

A third major problem with section 877 is that it requires the IRS to monitor an expatriate's activities for ten years after his departure. Such a monitoring effort is difficult when the taxpayer's income is not reported to the IRS. Such monitoring requires the cooperation of taxpayers who no longer live in the United States and who generally are no longer otherwise subject to U.S. law.

4. Section 7701(b)(10).

Section 7701(b)(10) applies the taxing regime of section 877 to departing resident aliens only if the alien resided in the United States for at least three years prior to his departure and then reestablishes U.S. residency within three years after that departure. Thus, an alien who is a long-term resident of the United States can avoid U.S. residence-based tax if he does not permanently return to the United States within three years—even if he abandoned his U.S. residence for tax purposes.

Since section 7701(b)(10) applies the principles of section 877, it is also subject to two of the fundamental problems with section 877 described above. It is limited to U.S. source income and it requires the IRS to monitor the taxpayer's activities while he is outside the jurisdiction of the United States. As previously described, the 1984 Conference Report indicates that these rules should be reexamined.[12]

B. Gift and Estate Taxes—Sections 2501(a)(3) and 2107

The gift and estate and tax expatriation provisions generally suffer from the same shortcomings as the income tax provisions. They only apply if there is tax motivation, they only apply to U.S. situs assets, and they can be triggered long after the taxpayer has left the U.S. tax jurisdiction.

1. Section 2501(a)(3).

In general, nonresident alien donors are only subject to U.S. gift tax with respect to gifts of U.S. real estate and tangible personal property situated in the United States. Under section 2501(a)(3), a U.S. citizen relinquishing his or her citizenship for tax purposes is subject to gift tax on gifts of any U.S. property, including U.S.

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[9] *See* New York City Bar, *supra; see also* Zimble, *supra* at 617.

[10] *See,* Postlewaite, *supra* at 162, who suggests that one way to defray the effect of section 877 is to wait ten years. ("Some tax benefit should be attained through the use of the installment sales method, if some receipts are received after the statutory period has expired.")

[11] The advertisement for the conference continues: "These secrets would only normally be divulged in private consultations, for which [the speaker's] clients pay thousands of dollars, so take advantage of this unique day . . . All attendees are sworn to secrecy. No journalists or government employees will be admitted. No tapes or transcripts will be available afterwards."

[12] See, the 1984 Conference Report at 967.

intangible personal property (e.g., securities of U.S. issuers). However, the provision applies only if the transfer occurs within ten years of the loss of nationality.

Further, like section 877, section 2501(a)(3) does not apply to foreign assets. For example, ————. We understand that practitioners may advise taxpayers to restructure the holding of their assets as to their situs or ownership in an attempt to avoid the expatriation rules.

2. Section 2107.

Nonresident aliens are subject to U.S. estate taxation with respect to their U.S. situs assets. Such assets include U.S. real estate, tangible personal property situated in the United States and stock in U.S. corporations. U.S. bank accounts and "portfolio interest" obligations that are not related to a U.S. trade or business are not U.S. assets for purposes of computing the U.S. estate of a nonresident.

Section 2107 is the estate tax expatriation Code provision. Its principal effect is to broaden the definition of property subject to U.S. estate taxation to include a nonresident alien's indirect ownership interest in U.S. property held through certain foreign corporations. As is the case with other expatriation provisions, its application requires proof of a tax avoidance motive and is limited to situations in which the decedent dies within ten years of expatriation.

As indicated above with respect to the gift tax expatriation provisions, expatriates may be advised to restructure the holding of their assets before their death without gift tax consequence, in order to minimize or eliminate U.S. estate tax consequences.

QUESTION 2. ENFORCEMENT OF CURRENT LAW

A. Existing enforcement efforts

The IRS relies on its general programs for selecting returns for examination and identifying and pursuing specific issues related to expatriation.

The Discriminant Function ("DIF") system is the most common method for selecting income tax returns for examination. This system involves a mathematical scoring of the examination potential of returns. The higher the DIF score, the more likely a return is to be examined. *For example* ————.

(————.)

In addition, the Coordinated Examination Program (CEP) is a special program for the examination of large, corporate cases. When one of these corporations is examined, the IRS "package audit" policy requires that the returns of the corporate officers and the related major shareholders be inspected for audit potential. ————

The IRS occasionally identifies taxpayers or issues for examination based on information from public sources. Other IRS enforcement initiatives, such as the stop filer (or "reminder-to-file") program, discussed below, may also identify expatriate taxpayers.

The IRS classifies for examination every nonresident estate tax return. The tax return for these estates (Form 706NA) includes a question about whether the descendent had been a citizen of the United States within ten years of his death. Each year a handful of tax returns are filed with a "yes" answer to this question. However, IRS examiners who monitor these transaction report that they have rarely been able to identify a case where the estate included U.S. situs assets held through a foreign corporation.

There is no interagency agreement by which the Department of State routinely provides to the IRS lists of expatriates who have renounced their U.S. citizenship. However, the Department of State responds to IRS requests about a particular taxpayer's citizenship status.

We are not aware of any taxpayers who have voluntarily filed returns indicating that they are subject to section 877.

B. Taxpayer controversies

The IRS has litigated a number of cases involving taxpayers who have expatriated. *See Crow* v. *Comm'r,* 85 T.C. 376 (1985); *Estate of Petschek* v. *Comm'r,* 81 T.C. 260 (1983); *di Portanova* v. *U.S.,* 690 F.2d 169 (Ct.Cl. 1982); *Furstenberg* v. *Comm'r,* 83 T.C. 755 (1984); *Kronenberg* v. *Comm'r,* 64 T.C. 428 (1975). In addition, there are several pending taxpayer controversies that further illustrate the IRS' experience with existing law. A summary of these controversies is provided below. To the best of our knowledge, this information is correct as of April 25, 1995.

(————).[13]

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[13] (————). Shine, *Practical International Estate Planning,* Vol. 1.

QUESTION 3. REGULATIONS UNDER SECTION 877

No regulations have been issued under section 877, and IRS records do not indicate that a regulation project was ever opened under this Code section. Not all Code provisions require regulations, and the IRS and Treasury may decide not to issue regulations when the Code provisions presents no special interpretation or implementation issues requiring guidance. In 1984, when the Congress expressed reservations about the limited scope of existing section 877, the Conference Report made no statements about the need for regulations; instead, the Congress expressed a need to reexamine the statute.[14]

IRS personnel rely on the statute, legislative history, revenue rulings, and court cases to determine the standards for whether a taxpayer has relinquished his citizenship for tax avoidance purposes.

Regulations were issued in 1973 under the estate and gift tax expatriation provisions of sections 2107 and 2501(a)(3). These regulations provide that the IRS may presumptively establish that it is reasonable to believe an expatriating taxpayer had as one of his principal purposes (but not necessarily his only principal purpose) the avoidance of federal income, estate or gift taxes by showing, based on available information, that a taxpayer's loss of citizenship would, but for the applicable section, result in a substantial reduction of U.S. federal and applicable foreign estate or gift taxes, respectively. The regulations indicate that a taxpayer may rebut this showing only by a preponderance of the evidence to the contrary.

As noted above, this approach is problematic and issuing regulations under the income tax provisions would seem nonproductive.

QUESTION 4. TAX COMPLIANCE

Enforcement efforts relating to the taxation of expatriates were described above. With respect to your specific question about coordinated enforcement with treaty partners, the IRS could use tax treaties to obtain certain information on former U.S. citizens who reside in a treaty country. However, many expatriates reside in jurisdictions that do not have a tax treaty with the United States (*e.g.*, ————).

Even when a tax treaty is applicable, the simultaneous examination program may not be available when examining persons who have relinquished U.S. citizenship. Simultaneous examinations between the United States and other countries are only appropriate when both countries have tax interest whose purposes would be served by such a procedure. This may not be the case when examining a former U.S. citizen under section 877. Such an examination would only collect taxes for the United States and not for the treaty partner.

Question 5. March 17, 1995 Memorandum From Office of Assistant Commissioner (International)

A. Number who expatriate

Assistant Secretary Samuels will provide an explanation of Treasury's revenue estimates for proposed section 877A. The March 17, 1995, memorandum addressed the lack of hard data on the number of taxpayers who expatriate for tax avoidance purposes and who might be subject to tax under current section 877.

Similarly, Assistant Secretary Samuels will provide information regarding the relationship between a taxpayer's gross assets and the unrealized appreciation in his assets. Tax returns do not contain information regarding these items.

B. Department of State information

There is no current procedure that requires the Department of State to notify the IRS when a U.S. citizen relinquishes citizenship. However, the Department of State will respond to IRS requests about whether or not a particular taxpayer is a U.S. citizen.

The Department of State provides the IRS with passport information under section 6039E of the Internal Revenue Code, as required by law.

For purposes of enforcing proposed section 877A, we understand that the Department of State is considering what procedures, if any, need to be amended to allow them to provide to the IRS lists of individuals relinquishing citizenship.

C. Inquiries to IRS regarding section 877

The memorandum referred to in your letter reflects anecdotal information from IRS personnel now in our National Office who, while working at U.S. embassies, came in contact with U.S. taxpayers who inquired about their U.S. tax obligations. In some instances, taxpayers who were informed of the existence continuing U.S. tax obligations were they to expatriate made comments from which one can infer

[14] *See*, 1984 Conference Report at 967.

that section 877 has some deterrent effect. However, we have no way of knowing what actions these taxpayers eventually took.

D. Questions on Form 1040 or Form 1040NR

Including a question on Form 1040 about whether an individual taxpayer is a U.S. citizen or a resident alien would not be helpful in identifying former U.S. citizens. An individual who renounces U.S. citizenship would normally then file Form 1040NR, if further U.S. returns are required. The suggested question on Form 1040 would not be relevant. In addition, it would not be efficient or practical to ask 110 million taxpayers to read instructions and respond to a question in order to identify a relatively small number of expatriates. Statistically, many thousands of persons are likely to answer the question incorrectly, and millions more would not answer the question at all.

We will consider whether including a question on Form 1040NR would enhance enforcement in this area. We note that this measure would only identify those expatriating individuals who have a continuing filing obligation and who voluntarily disclose giving up citizenship. In addition, we must consider whether requiring hundreds of thousands of aliens to respond to a question on Form 1040NR in order to identify a few expatriating taxpayers is an efficient use of the Form 1040NR. An alternative source of the information (e.g., the Department of State) may be a more cost effective alternative.

E. Gift tax provisions

Upon further consideration, it appears that we overstated our reliance on the Code's gift tax provisions to collect tax from expatriates.

F. Stop-filer program

The stop-filer program, also known as the "reminder-to-file" program, is part of the larger nonfiler portion of the Information Returns Program (IRP). Using the numerous information documents (e.g., Forms W-2, Forms 1099) received each year, plus selected prior filing information, the IRS evaluates the likelihood of delinquent returns.

The reminder-to-file and nonfiler programs are highly automated programs generating millions of notices annually. For tax year 1993, 26,570 reminder-to-file notices were issued to overseas taxpayers who filed in the immediate prior year, but not in the current year. Subsequently, 85,000 return delinquency notices were generated to overseas nonfilers. The overseas notices are generally dealt with in the Philadelphia Service Center. The low volume of expatriating citizens relative to the high volume of items processed in the Service Center makes these programs relatively inefficient tools to identify expatriates.

APRIL 7, 1995 LETTER

QUESTION 1. ENFORCEMENT

A. Cooperation between Treasury and IRS

In May 1994, a working group was established to examine various tax compliance issues associated with the use of foreign trusts. This group had members from the Office of Chief Counsel, the Office of Assistant Commissioner (International), and the Office of International Tax Counsel. The group, which is ongoing, considers legislative proposals and administrative guidance, and provides assistance to IRS field personnel in controversies (examinations, appeals, litigation). The expatriation and foreign trust legislative proposals were considered by this group.

B. Enforcement of expatriation provisions

Under the proposed expatriation provision, the IRS should obtain information about U.S. citizens renouncing their U.S. citizenship. For this purpose, the IRS intends to explore an interagency arrangement to secure the assistance of the Department of State in obtaining information about individuals who are renouncing their U.S. citizenship and are potentially subject to the proposed tax provisions.

In addition, ninety days after renunciation of citizenship, proposed section 877A requires the individual to file a tax return reporting his income, including the gains triggered by expatriation, through the date of expatriation. The proposed provisions would enable the IRS to enhance its enforcement and collection capabilities in order to pursue taxpayers who fail to file the required tax return and to pay the tax liability determined to be due. For this purpose, the IRS has begun discussions with Customs and the Immigration and Naturalization Service to explore the extent to which these agencies can lend support to the IRS.

Of course, some individuals may try to evade the proposed statute by hiding their assets. However, we believe that most individuals who would be subject to the proposed tax would not wish to commit a tax crime. (————.) If these individuals were willing to commit a crime, they could hide their assets in a foreign bank account and retain their U.S. citizenship. However, the individuals who renounce their citizenship for tax purposes generally are trying to avoid tax within the established rules.

In sum, the proposal would be much easier to enforce since it avoids the three fundamental problems of current law: it does not rely on tax motivation, it does not apply to a limited class of income, and it generally does not apply to gains triggered long after the taxpayer expatriates.

QUESTION 2. APPLICATION OF EXPATRIATION TAX TO INTERESTS IN TRUSTS

Assistant Secretary Samuels will address these issues.

QUESTION 3. SUBSEQUENT MODIFICATIONS OF TAX ON EXPATRIATION

Assistant Secretary Samuels will address these issues.

QUESTION 4. PARTICULAR INDIVIDUALS

————.

I hope these responses to your questions are helpful. If you need additional information, please contact me or Mike Danilack, of my staff, at (202) 622–5440.

Sincerely,

MARGARET MILNER RICHARDSON.

DEPARTMENT OF THE TREASURY,
Washington, DC, May 2, 1995.

KENNETH J. KIES, Esq.
Chief of Staff, Joint Committee on Taxation,
Congress of the United States, Washington, DC.

DEAR KEN: I am writing to respond to your letter of April 7, 1995 to Commissioner Richardson and myself requesting information regarding the President's proposal to impose a tax on certain U.S. citizens and residents who expatriate. I am also including in this letter responses to certain inquiries made in your April 4, 1995 letter to Commissioner Richardson.

This letter summarizes our views about the merits of the proposals regarding the taxation of expatriates and possible alternatives that have been suggested. Responses to your requests are incorporated throughout this letter. I understand that Commissioner Richardson has responded directly to your letters. To provide you with a comprehensive answer, some aspects of my letter will cover matters discussed in her letter.

I. BACKGROUND OF PROPOSAL

The Administration developed its expatriate proposal after a detailed review of the operation and effectiveness of existing law. In this review, we determined that existing law had numerous serious defects that are well-known and understood by taxpayers, tax advisors and commentators. We determined that the provision was being circumvented for tax avoidance purposes by very wealthy individuals and marketed by professionals for this purpose. Also, in 1984, Congress recognized that Section 877 had defects and indicated that section 877 should be reexamined in the future. *See* H.R. Rep. No. 861, 98th Cong., 2d Sess. 967 (1984). We are pleased that revision of section 877 is now receiving serious attention, and believe that the proposed section 877A will prevent U.S. citizens and certain residents from escaping their U.S. tax responsibilities.

Based on the seriousness of the defects in existing law, we determined that section 877 needs to be revised to require U.S. citizens and certain long-term permanent residents who expatriate to be treated in a similar manner to those individuals who do not renounce their citizenship or permanent residence status. In developing the Administration's proposals, we reviewed options and concluded that the Administration's proposal represented an appropriate balance of interests. In this regard, we determined that it was appropriate that the new rules would only apply to taxpayers with substantial unrealized gains, that the changes would only apply to income taxes, and that certain significant asset categories (U.S. real estate and certain pensions) would be excluded.

We believe that enactment of the proposal is important to the integrity of our tax system and to the goal that American taxpayers feel that their tax system is fair and equitable. Without the changes in the Administration's proposal, questions of fairness and equity will not be properly answered, and taxpayers will continue to believe that wealthy Americans can escape their tax responsibilities by exploiting loopholes in the system.

II. DESCRIPTION OF PROPOSAL

The Administration's proposal is the product of a great deal of study that began with an analysis of why current law needed revision. The Administration's proposal was considered by a joint task force (the "Foreign Trust Working Group"). The FTWG was organized in May 1994 and involved staff from Treasury's Office of International Tax Counsel, IRS' Office of Associate Chief Counsel (International), and IRS' Office of Assistant Commissioner (International). All of these offices were extensively involved in the legislative proposal. (This paragraph responds to question 1 of your April 7 letter.)

I note that the FTWG also considered the Administration's proposals on foreign trusts. We look forward to the comments of the staff of the Joint Committee on Taxation on the foreign trust proposals. We hope that the foreign trust proposals are considered promptly by Congress.

A. Evolution of Proposal

Under the Administration proposal, if a U.S. citizen or long-term permanent resident expatriates, certain property held by that person would be treated as sold at fair market value immediately before such expatriation. Property treated as sold would include all items of property that would be in the individual's gross estate under the Federal estate tax rules. In addition, certain trust interests would be subject to the new rules. The proposal contains important exceptions. First, gains up to $600,000 would be exempt from tax. Second, U.S. real estate and interests in certain retirement plans would not be treated as sold.

On March 15, 1995, the Senate Finance Committee's version of the legislation restoring the health insurance deduction for self-employed individuals (H.R. 831) included a modified version of the expatriation proposal. The Senate version excluded lawful permanent residents ("green card holders") from the provision and made several other changes described below. The expatriation provision was approved by the Senate. However, this provision was dropped when the House-Senate conference met on March 28, 1995. At that time, the staff of the Joint Committee on Taxation was asked by Congress to prepare a study of the expatriation issue by June 1, 1995.

On April 6, 1995, Senator Moynihan introduced S. 700, a revised version of the Senate bill. Senator Moynihan's version made several modifications to the Senate version, such as: (i) including green card holders within the scope of the provision; (ii) allowing an individual who immigrates to the United States to establish a fair market value basis in property owned by the individual as of the date of immigration; (iii) allowing a taxpayer to elect, on an asset-by-asset basis, to continue to be taxed as a U.S. citizen; and (iv) allowing deferral of tax on expatriation in all cases where estate taxes would be deferred.

B. Scope of Proposal

Expatriation by U.S. citizens who avoid a significant amount of U.S. tax is a serious problem and is the principal focus of the Administration's proposal. As you know, only a very small number of U.S. citizens expatriate every year. The proposal was designed to apply to that even smaller subgroup of expatriating individuals who are avoiding significant U.S. income tax liability. The proposed exemption amount of $600,000 of unrealized gain and exclusion of certain assets was designed to achieve this goal. A Treasury press package stated: "The Administration proposal is intended to apply only to a small number of wealthy persons. The proposal applies only if an expatriate has more than $600,000 in gains (not $600,000 in gross assets) without regard to retirement plans or real estate holdings. Therefore, the proposal would rarely apply to an individual whose gross assets are less than $5 million." In context, the $5 million gross asset amount flows from the previous sentence which explains the various exceptions for $600,000 of unrealized gains ($1.2 million for a married couple) plus U.S. real estate and certain pension benefits to the tax on expatriation. The $5 million number emphasized that the proposal is designed to apply to persons with substantial assets and substantial unrealized gains since the avoidance of tax by those taxpayers raises questions of fairness with our tax system. (This paragraph responds to question 5a of your April 4 letter.)

You have asked about the expectation that about two dozen taxpayers with substantial unrealized gains would be affected by the proposed rules. On average, we have identified a few departures of extremely wealthy taxpayers per year. Treasury complied information on expatriating individuals from news media accounts and from lists of expatriations given to us by the Department of State (regarding individuals who renounced citizenship from 1993 forward) and the Immigration and Naturalization Service (regarding long-term residents who abandoned that status in the last five years). In the course of compiling this information, we obtained information on some of the individuals you noted, and identified other individuals. We understand that you will be receiving the Department of State data directly from that Department (although you have not requested data from 1993 which we used in our analysis).

Based on all the data available to us, and not wanting to understate the number of individuals affected by the proposal, we have expected that approximately two dozen wealthy individuals would be affected by the expatriation tax in any year. This includes both individuals who would pay the tax on expatriation and individuals who would choose to stay in the United States as a result of the proposal. (These paragraphs respond to question 5a of your April 4 letter and question 4 of your April 7 letter.)

When the Treasury examined the existing expatriation rules, information was obtained from published interviews and informal conversations with practitioners. However, since we cannot independently verify this information, we have not incorporated our conversations with practitioners into this letter. However, this information suggests that the above expectations are conservative.

A substantial revenue loss can occur if only one extremely wealthy taxpayer expatriates each year. Assume for purposes of illustration that: (i) absent the proposal a 70-year-old U.S. citizen would expatriate, (ii) the taxpayer has been paying $40 million per year in income taxes, (iii) the taxpayer has assets worth $4 billion ($3 billion of which is accrued capital gains), and (iv) the taxpayer plans to leave half of his estate to charity. The revenue effect of this taxpayer staying in the United

States for one additional year is approximately $73 million—$40 million in income taxes plus $33 million in estate taxes ($4 billion estate less $2 billion given to charity multiplied by the 55 percent estate tax rate multiplied by the probability that he will die next year (about 3%)). If the proposal were to cause one additional individual who would otherwise have expatriated (or several individuals who cumulatively generate a similar amount of revenue) to remain in the United States each year, the six-year revenue effect for the total of six individuals affected during the six-year period would be $1.5 billion ($73 million in year one, $146 million in year two, $219 million in year three, $292 million in year four, $365 million in year five, $438 million in year six). Note that if the taxpayers in this illustration were to expatriate and pay the tax on expatriation, the revenue effect over six years would be about $5 billion ($840 million each year for six years).

III. TRUST ISSUES

One aspect of the proposal deals with interests in trusts. In developing the proposal, we considered the appropriateness of taxing interests in trusts, particularly remote or contingent interests. We concluded that since assets held in trust represent valuable interests that an expatriate removes from the U.S. income, estate and gift tax systems when he leaves the country, trust interests should be included in the proposal.

In developing the proposal, we recognized that the proposal is in some respects more favorable to taxpayers than existing estate and gift tax rules because the proposal determines ownership interest in a trust on the basis of all the facts and circumstances. Thus, a taxpayer may show that he or she has no actual interest in a trust even if he or she is a potential beneficiary of the trust. The Senate Finance Committee report elaborates on this rule: "It is intended that such regulations disregard de minimis interests in trusts, such as an interest of less than a certain percentage of the trust as determined on an actuarial basis, or a contingent remainder interest that has less than a certain likelihood of occurrence." We adopted this approach in order to allow taxpayers to demonstrate that the trust interest should not be subject to the proposal.

Generally, in determining how to deal with the issue of interests in trusts, we consulted other areas of the Code which impose a tax before assets are sold—in particular, estate and gift taxes. Congress has considered liquidity problems in this context and decided on the appropriate flexibility that should be permitted to taxpayers facing these problems. Treasury looked to decisions that Congress had previously made in the estate tax area for guidance on the payment of tax on expatriation. Thus, as provided in existing section 6166 for the estate tax, the Administration's proposal allows a taxpayer to defer payment of the tax on expatriation with respect to interests in closely-held businesses. In addition, pursuant to current authority for closing agreements, the Commissioner may permit deferral of the payment of tax on expatriation under appropriate agreements. We believe that these provisions should be reasonably satisfactory to those very small number of taxpayers who have liquidity problems.

The bill passed by the Senate expanded the extension of time provision by deleting reference to section 6166 (allowing deferral of tax for five years for interests in closely-held businesses) and substituting section 6161 which allows the Commissioner to defer the payment of estate tax on any asset for up to ten years.

On April 6, Senator Moynihan introduced a bill providing for a revised version of the tax on expatriation. Senator Moynihan's version gives even more flexibility to taxpayers with illiquid assets. First, it allows deferral of tax in all circumstances where payment of the estate tax would be deferred. Therefore, in addition to the relief provided by both section 6161 (general extension of time to pay) and 6166 (for closely-held businesses) payment of the tax on expatriation also could be extended for reversionary or remainder interests in property as provided in section 6163. Payment of tax liabilities also could be extended under section 6159 to facilitate collection of tax liabilities. Second, Senator Moynihan's bill allows the Commissioner to extend the time for payment of the tax on expatriation for any period. Third, Senator Moynihan's bill adds a new provision which allows a taxpayer to elect to continue to be taxed as a U.S. citizen on assets that the taxpayer designates. The taxpayer would therefore not be subject to U.S. tax on the asset that he designates until the asset was disposed of or the taxpayer transfers the asset through gift or death. We believe that this approach addresses questions raised during the consideration of H.R. 831.

The issue of whether a contingent beneficiary who ultimately receives no distribution from a trust would be entitled to a refund of the tax on expatriation is resolved in the same way that Congress resolved the issue in the estate and gift tax area. In that area, the decedent or donor is generally required to value the asset as of the date of transfer. If the asset subsequently turns out to be worth a different amount (either more or less than the estimate on the date of death), there is no adjustment to the estate or gift taxes paid. Senator Moynihan's bill gives an expatriate an additional alternative that is not available for estate and gift tax purposes. The Moynihan bill allows an expatriate to defer the taxable event until the asset is sold or transferred. Thus, an expatriate is faced with a choice: he or she can pay the expatriation tax up front, or he or she can elect to defer tax until he realizes income from the trust.

We do not anticipate that the provisions relating to interests in trusts could be used to avoid application of the expatriation proposal. The proposal determines trust ownership on the basis of all the facts and circumstances. Therefore, if an expatriate tries to avoid application of the tax on expatriation by contributing his assets to a trust from which he will benefit, the facts and circumstances determination should be able to determine his ownership interest in the trust assets. If he were to contribute his assets to a trust from which he would not benefit, he would pay U.S. gift tax on that transfer—a tax that could be larger than the tax on expatriation would have been. (These paragraphs respond to questions 2 and 3 of your April 7 letter.)

IV. SUGGESTED ALTERNATIVES TO THE PROPOSAL

Two alternatives have been suggested to the Administration proposal. In our view, these alternatives do not adequately deal with tax avoidance by expatriates.

A. Proposal To Retain Tax Motivation Requirement

It is essential that the tax motivation requirement of section 877 be eliminated. Although a tax motivation requirement may be appropriate in some circumstances, in this context, the Administration believes that fairness of the tax laws requires tax to be imposed on an expatriate's appreciated assets without regard to tax motivation. Allowing expatriates with substantial unrealized gains to avoid all tax on these assets creates the perception of an unfair tax system for those who remain. Remaining taxpayers will either pay income tax when they sell their assets or estate tax when they die.

Even if this fundamental assumption is rejected, and the provision were designed only to tax those who expatriate to avoid tax, the tax motivation requirement would fail to achieve this purpose. Many tax-motivated individuals that Congress had in fact targeted would escape taxation because of the government's proof problems in this context. To demonstrate that a taxpayer has a tax avoidance motive, the IRS generally must investigate the taxpayer's personal motivations regarding expatriation, compile family histories, and examine the tax regime of the new country or countries of residence. Such an examination is tedious and requires the cooperation of taxpayers who no longer live in the United States and who generally are no longer otherwise subject to U.S. law. We believe that this difficulty of administration is understood by taxpayers who exploit the weaknesses with current law.

The difficulty of administering this requirement is further compounded by the fact that taxpayers who expatriate rarely admit tax avoidance as their reason for renouncing U.S. citizenship. Moreover, well-advised taxpayers can be expected to deny the tax avoidance intent. We understand that those taxpayers are routinely advised not to volunteer to pay tax under section 877. *See* Langer, The Tax Exile, 1993–94 at 99. Indeed, we understand that the IRS is not aware of any taxpayers who have voluntarily filed returns indicating that they are subject to section 877. Thus, the operation of section 877 requires the IRS to detect expatriates with potential section 877 liability, conduct an audit, successfully sustain the contention that there was tax avoidance, and assess and collect a tax deficiency.

There is precedence for the proposition that a tax avoidance motive should not be required when appreciated assets are transferred out of U.S. taxing jurisdiction. Congress has previously dealt with similar issues in section 367 of the Code, which required a tax avoidance motive before transfers of appreciated assets outside the tax jurisdiction of the United States were taxed. Prior to 1985, section 367 applied to the outbound transfer of assets to a related foreign corporation if one of the principal purposes of the transfer was to avoid U.S. tax. In response to *Dittler Bros., Inc. v. Comm'r*, 72 T.C. 896 (1979), and subsequent cases, Congress in 1984 decided to eliminate tax motivation from section 367. *See* Joint Comm. on Taxation, General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984 at 427 ("1984 Blue Book"). Consequently, Congress understood the inappropriateness of applying the subjective intent test in the context of section 367 when assets are potentially removed from the U.S. taxing jurisdiction and, in the legislative history to that law, Congress indicated that section 877 needed to be reexamined.

In considering the issue of perceived fairness and application of a subjective intent in the expatriation context, it is noteworthy that the tax literature suggests that wealthy expatriates may not, in fact, pay significant foreign taxes after their expatriation. It appears that many of these expatriates may either take up new residences in true tax havens or in high-tax jurisdictions that have special tax incentives for wealthy immigrants. *See* Langer, *supra* at xvii. Mr. Langer's book contains fifty pages describing countries in which a tax expatriate may reside without incurring significant local taxes, including Australia, Britain, Canada, Ireland, Israel, and Switzerland. *Id.* at 124–74.

B. Proposal To Amend Section 367

It has also been suggested that amendments to section 367 be made to address the problems of section 877. As discussed below, we would oppose this approach as an alternative to the Administration proposal. Section 877 only applies to a limited category of income and is easily avoided. Section 877 only taxes certain U.S. source income that is earned or realized within ten years of expatriation. If section 367, which taxes transfers of property by a U.S. person to a foreign corporation were amended to apply to transfers by expatriates, that amendment would only close one way that source is manipulated under section 877. Other methods may remain. Also, such a change to section 367 would not restrict the ways a taxpayer can manipulate timing to avoid section 877.

Current law allows an expatriate with foreign income to avoid U.S. tax on such income, even if it economically accrued while the taxpayer was a U.S. citizen. Thus, this type of income would not be taxed under amendments to section 367.

Section 877(c) provides that gain on the sale of property whose basis is determined by reference to the basis of U.S. property will be treated as gain from the sale of U.S. property. This provision was designed to prevent tax-motivated expatriates from avoiding U.S. tax by making a tax-free exchange of U.S. property for foreign property. Section 877(c), however, does not prevent taxpayers from avoiding section 877. It appears that departing taxpayers can generally avoid U.S. tax even on their U.S. source income by restructuring their activities to earn foreign source income in connection with the sale of U.S. assets. One technique that practitioners recommend to accomplish this goal is for the taxpayer to expatriate and then contribute U.S. assets into a foreign corporation. The foreign corporation sells the U.S. assets and distributes the proceeds of the sale to the expatriate. Practitioners argue that dividend distributions are not subject to existing expatriation rules because they are from a foreign source. *See,* New York City Bar, "Report on the Effect of Changes in the Type of United States Tax Jurisdiction over Individuals an Corporations" (1991); Zimble, "Expatriate Games: The U.S. Taxation of Former Citizens," Tax Notes, Nov. 1, 1993 at 617.

While this technique may be addressed by applying section 367 to expatriates (and thereby triggering certain gains when assets are transferred to a foreign corporation), other techniques may be used in an attempt to convert the source of income. For example, some practitioners have explained how foreign trusts can be used to avoid the application of the income, estate and gift tax expatriation rules. *See* Gross, "Expatriation and Foreign Trusts," 5 Int'l Tax Journal 132 (1978). *See also,* Postlewaite, International Individual Taxation 161–62 (1980) (discussing various expatriate planning opportunities).

Even if all resourcing opportunities were effectively stopped, section 877 can be avoided by waiting ten years before selling U.S. assets or by employing techniques to defer the receipt of income. Taxpayers may have the beneficial use of their gains without paying U.S. tax by borrowing against U.S. assets until the 10-year period expires. Also, hedging techniques may permit the taxpayer to lock-in the gain during the 10-year waiting period.

* * * * *

We would be happy to address other issues which have been raised in connection with this proposal. For example, we are satisfied that the proposal will not adversely affect desirable U.S. economic activity by foreigners. The expatriation proposal only applies to foreigners who are immigrants and come to the United States with the intention to live here permanently. It does not apply to those who come here as investors or executives and reside here as nonimmigrants.

If there are other issues you would like us to address, or if you need additional information, please let me know.

Sincerely,

LESLIE B. SAMUELS,
Assistant Secretary (Tax Policy).

UNITED STATES DEPARTMENT OF STATE,
Washington, DC, May 9, 1995.

Hon. ROBERT PACKWOOD,
Vice Chairman, Joint Committee on Taxation,
United States Senate.

DEAR MR. CHAIRMAN: In my April 28 letter responding to your letter of April 25, I advised you that representatives of the Department of State would be meeting on May 1 with the staff of the Joint Committee on Taxation, and that they would at that time address Mr. Kenneth Kies' letters of April 4 and 20, 1995. I am writing now to follow up on the May 1 meeting, and to respond in writing to those letters.

April 4 Letter:

1. How many individuals have relinquished their U.S. citizenship in each of the past 15 years, and for what reasons? Under what circumstances does the United States permit dual citizenship? What countries are known not to permit dual citizenship?

At TAB 1, you will find statistical information on the total number of individuals who relinquished U.S. citizenship between 1980 and 1994. With respect to 1995, 408 individuals relinquished citizenship from January 1 through April 26, 1995. Although the Department does not require individuals who relinquish U.S. citizenship to state their reasons therefor, they frequently represent to us that relinquishment is prompted by family reasons and host country pressures.

The United States permits dual nationality, and you will find at TAB 2 two Department of State pamphlets which address dual nationality: *Dual Nationality,* and *Advice About Possible Loss of U.S. Citizenship and Dual Nationality.* The Department does not maintain a list of countries that do not permit dual nationality. The Department is aware, however, that a number of countries do prohibit certain classes of citizens from possessing dual nationality. For example, both Bulgaria and Israel bar high-level government officials from retaining dual nationality.

2. What are the procedural steps involved in the relinquishment of U.S. citizenship, both from the perspective of the State Department and from the perspective of the expatriating citizen? How do these procedures differ, and what is their legal effect, in the case of expatriation by a minor (or by one who was recently a minor)?

Under Section 349 of the Immigration and Nationality Act, ("INA"), 8 U.S.C. 1481, and the Supreme Court's decision in *Afroyim* v. *Rusk,* 387 U.S. 253 (1967), Americans cannot lose U.S. citizenship except by voluntarily performing certain acts with the intention of relinquishing citizenship. The acts that result in loss of citizenship when performed voluntarily and with the requisite intent fall into basically two categories. First, a U.S. citizen can formally renounce citizenship pursuant to Subsection 349(a)(5) of the INA. This entails executing an Oath of Renunciation before a consular officer. Second, a citizen can perform one of the acts specified in Subsections 349(a)(1)–(4) and (6)–(7). In cases of formal renunciation, the individual's loss of citizenship is effective the day the Oath of Renunciation is executed before the consular officer overseas. In cases involving the other expatriating acts defined by Section 349(a)(1)–(4) and (6)–(7), loss of citizenship is effective on the date of the commission of the act, even though loss may not be documented until a later date. (The Department generally documents loss in such cases when the individual acknowledges to a consular officer that the act was taken with the requisite intent.) In both formal renunciation and loss of nationality cases, the consular officer abroad submits a Certificate of Loss of Nationality to the Department for approval as required by Section 358 of the INA, 8 U.S.C. 1501. The date upon which the Certificate of Loss of Nationality is approved, ordinarily two weeks to six months after submission, is not the effective date for loss of citizenship.

A child under the age of 18 cannot lose U.S. citizenship under section 349(a)(1) of the INA (by naturalizing in a foreign state) or under Section 349(a)(2) (by taking an oath of allegiance to a foreign state). A child under eighteen can, however, lose U.S. citizenship under Section 349(a)(3) by serving in a foreign military or under Section 349(a)(5) by formally renouncing citizenship. Under INA Section 351(b), 8 U.S.C. 1483(b), however, someone under eighteen who loses citizenship by foreign military service or formal renunciation may regain citizenship by asserting a claim of citizenship before reaching the age of eighteen years and six months.

At TAB 3 are three attachments which you may find helpful: a State Department flyer entitled, *Renunciation of United States Citizenship,* Section 349 of the Immigration and Nationality Act, and Section 358 of the Immigration and Nationality Act.

Finally, at the May 1 meeting, I understand that the staff inquired about the function of the Bureau of Consular Affairs, and about laws governing the acquisition of U.S. citizenship. At TAB 4, you will find two Department flyers entitled, *The Role of the Bureau of Consular Affairs Within the Department of State*, and *Functions of U.S. Consuls Abroad* which provide information regarding consular responsibilities. At TAB 5, you will find Section 301 of the INA, 8 U.S.C. 1401, which describes the categories of individuals who are U.S. citizens at birth. (U.S. citizenship can also be acquired by naturalization which is governed by Sections 310–348 of the INA.)

3. What records are kept in connection with the relinquishment of citizenship? To what extent is information from such records shared with the Internal Revenue Service (IRS)? Information relevant to the IRS may include the expatriate's name, social security number, reasons for expatriating, new nationality, new residence and foreign tax status. What laws or procedures would need to be changed to enhance access to such information by the IRS?

In all formal renunciation cases, and in all other cases of loss of citizenship adjudicated by the Department, the Department issues a Certificate of Loss of Nationality. A copy of the Certificate is kept by the Department. In formal renunciation cases only, the Department also retains a copy of the Oath of Renunciation and a Statement of Understanding. Attached at TAB 6, you will find blank copies of these three documents.

The Certificate of Loss of Nationality contains four principal categories of identifying information: the individual's name, date and place of birth, foreign residence, and foreign nationality. The Department does not collect social security numbers. The Department does not require individuals wishing to relinquish citizenship to state their reasons for expatriating or their foreign tax status.

When the Department receives a name-specific request from the IRS, the Department will provide the IRS with a copy of the Certificate of Loss of Nationality and any other relevant records pertaining to the subject of the request. The Department does not currently provide the IRS with the names of all individuals who relinquish citizenship on a routine and regular basis.

The Department believes that it would be in the strongest possible position in litigation if it received specific legislative authority concerning the routine disclosure of Certificates of Loss of Nationality to the IRS. This legislative remedy could be accomplished in one of two ways. The first would be by enacting a law comparable to Section 6039E of the Internal Revenue Code ("IRC"). 26 U.S.C. 6039E (TAB 7) Section 6039E of the IRC requires individuals applying for U.S. passports to indicate their social security numbers and addresses of foreign residence on the passport application. Furthermore, Section 6039E of the IRC specifically authorizes the State Department to provide the Treasury Department with the names, social security numbers and foreign addresses of all passport applicants. The second method would involve amending Section 358 of the Immigration and Nationality Act to include "the Treasury Department" or "any other federal agencies," 8 U.S.C. 1501. (TAB 3) (Section 358 now states that the Department must provide copies of all Certificates of Loss of Nationality to the Attorney General.) We prefer the first alternative and strongly urge enactment of such a provision.

Once the Department's legal requirements were addressed, the Department would be pleased to furnish the IRS with the names, foreign addresses, foreign nationality and social security numbers of all persons who are issued Certificates of Loss of Nationality on a routine and regular basis. Currently, individuals seeking to relinquish citizenship are not asked to furnish social security numbers. The Department's Certificates of Loss of Nationality could be amended, however, to include such information. If social security numbers were to be requested, we believe that the most appropriate model would be Section 6039E of the IRC in which failure to provide the information would subject the individual to IRS penalties rather than a denial of a Certificate of Loss of Nationality.

I would like to reiterate concerns noted by representatives of the Bureau of Consular Affairs in the May 1 meeting about requiring individuals seeking to relinquish citizenship to state their underlying motivations for relinquishing citizenship and to provide their foreign tax status as part of the relinquishment process. Although consular officers must ascertain whether an individual is acting voluntarily and possesses the intent to relinquish citizenship under INA Section 349, the individual may or may not make any representations about his underlying motivations; such representations would, in any event, be difficult to verify. With respect to foreign tax status, the Department believes that requesting this information could put consular officers in the difficult position of having to deal with questions and concerns outside their area of expertise.

4. To what extent could the State Department request or require an expatriating citizen to provide tax information as part of the process of expatriation? What limitations might apply to the type or scope of information provided, or to IRS access to such information?

At the May 1, meeting, the State Department representatives indicated that requiring individuals seeking to relinquish U.S. citizenship to furnish tax information as part of the expatratration process could be problematic. Our concern is based, in part, on placing consular officers in the difficult position of having to address questions and concerns outside their area of expertise. We also doubt that we could tie a person's right to renounce citizenship to their willingness to provide tax information. Subject to these considerations, we have advised Treasury of our willingness to develop an appropriate system.

5. Please feel free to share with us any further information or analysis on the issue of the application of international human rights principles to the taxation of expatriation, beyond the letters and memorandum submitted for the records of the hearings held last month by the oversight committees of the Senate Committee on Finance and the House Committee on Ways and Means.

The Department has studied carefully whether the proposed tax implicates human rights issues. As you are aware, on the basis of information provided by the Department of the Treasury that persons affected would have the means to pay the tax and that such taxes would not be more burdensome than those they would pay if they were to remain U.S. citizens (or residents), we concluded that the Administration's proposal is fully consistent with international human rights law and principles. It is important to note that under the proposal U.S. citizens would remain free to change their citizenship. The proposal does not in any way preclude such choice, even indirectly; we understand from Treasury that any tax owed by its nature applies only to gains and thus should not exceed an individual's ability to pay. (Treasury has also informed us that it has the authority to waive an assessed tax, which it could exercise if there were a compelling case.)

Moreover, international law would not prohibit reasonable consequences of relinquishment, such as liability for U.S. taxes that accrue during the period of citizenship. We understand from the Department of the Treasury that the imposition of taxes under the proposal would be reasonable in light of overall U.S. tax policy because the provision applies only to gains that accrue during the period of citizenship (or residence) in excess of $600,000; the tax rate is consistent with other tax rates; and affected persons would have the financial means to pay the tax, either immediately or on a deferred basis. Obviously, there is no international right to avoid paying taxes by changing one's citizenship. Our detailed analysis of the issue is contained in the statements that we provided for the record to the relevant Subcommittees of the Senate Committee on Finance and the House Committee on Ways and Means. (Attached for your convenience at TAB 8 is the memorandum that we submitted to the House Committee.)

April 20 Letter:

1. & 2. We would like to obtain the names and social security numbers of any individuals who have renounced their citizenship since January 1, 1995. Please include any individuals who have taken an oath of renunciation, signed a statement of voluntary relinquishment, indicated any intent to take such an oath or sign such a statement, or been issued a certificate of loss of nationality in 1995, and the dates on which any such action was taken. We would like to obtain the names and social security numbers of any individuals who renounced their citizenship in 1994. If possible, we would prefer to have this information on a computer diskette.

My letter of April 28 provided you the list of the names of all individuals who had been issued Certificates of Loss of Nationality by the Department from January 1, 1994-April 26, 1995. **[See Appendix H herein.]** We did not provide the social security numbers of such individuals because the Department does not collect that information in connection with the issuance of Certificates of Loss of Nationality. As I mentioned in my April 28 letter, our list included only those individuals who had received Certificates of Loss of Nationality.

At the May 1 meeting, you requested three additional categories of information with respect to the individuals who relinquished citizenship from January 1994 through April 26, 1995. The Department will provide your staff a computer-generated list containing two of the additional categories of information requested at the meeting: the date of issuance of the Certificate of Loss of Nationality and the date when the statutory act was performed which corresponds with the date upon which loss of U.S. citizenship is effective. **[See Appendix H herein.]** The Department will make diligent efforts to provide you with the third set of information: the date upon which an individual seeking to relinquish citizenship signed a statement relinquishing U.S. citizenship in cases of foreign naturalization. This information, however, is not kept in our computer system, and, therefore, its retrieval would necessitate the physical recovery and review of files, many of which are no longer retained in this office and cannot be retrieved in a short time-frame. We will attempt to conclude this project early in the week of May 8th.

3. We have complied a list of individuals included in the "Forbes 400" (denoting the richest Americans) over the last ten years. We would like to know which, if any, of these individuals (or members of their families, to the extent such information can be ascertained) have renounced their United States citizenship in the past ten years.

As I mentioned to you in my letter of April 28, the Department is unable to provide an accurate list of individuals who have received Certificates of Loss of Nationality based on the "Forbes 400" names provided, as this list does not include identifying information such as a date and place of birth. The Department is prepared to check the names of a portion of the "Forbes 400" individuals against our computer records. Where the "Forbes 400" list includes both the first and last name, the Department will provide the Joint Committee with a list of the names of individuals with *substantially similar* names who were issued Certificates of Loss of nationality during the period 1985–1994. Where the "Forbes 400" list indicates only a family surname, however, the Department will not be in a position to confirm whether individuals with substantially similar names have been issued Certificates of Loss of Nationality. I would like to emphasize that although the Department will generate a list of individuals who have received Certificates of Loss of Nationality and whose names are substantially similar to those included in the "Forbes 400" list, absent a first and last name as well as the date and place of birth, the Department will not be in a position to confirm that any of the "Forbes 400" individuals were issued Certificates of Loss of Nationality. We will attempt to conclude this project early in the week of May 8th.

I hope this reply fully addresses your concerns. Should you or your staff have additional questions, please feel free to contact Mr. Ed Betancourt in the Bureau of Consular Affairs who has been designated to work with the Joint Committee on this issue. He can be reached at: (202) 647–3666.

Sincerely,

WENDY R. SHERMAN,
Assistant Secretary, Legislative Affairs.

Attachments: As stated.

TAB 1

AMERICANS GIVING UP U.S. CITIZENSHIP, 1980–94

Year:	*Abandonments and Renunciations*
1994	858
1993	697
1992	556
1991	619
1990	571
1989	724
1988	489
1987	612
1986	751
1985	766
1984	788
1983	771
1982	952
1981	1446
1980	1119

Source: Department of State.

[See Appendix H for list of individuals who were issued Certificates of Loss of Nationality by the State Department from January 1, 1994–April 26, 1995.]

TAB 2

ADVICE ABOUT POSSIBLE LOSS OF U.S. CITIZENSHIP AND DUAL NATIONALITY

The Department of State is responsible for determining the citizenship status of a person located outside the United States or in connection with the application for a U.S. passport while in the United States.

POTENTIALLY EXPATRIATING STATUTES

Section 349 of the Immigration and Nationality Act, as amended, states that U.S. citizens are subject to loss of citizenship if they perform certain acts voluntarily and with the intention to relinquish U.S. citizenship. Briefly stated, these acts include:

(1) obtaining naturalization in a foreign state (Sec. 349(a)(1) INA);

(2) taking an oath, affirmation or other formal declaration to a foreign state or its political subdivisions (Sec. 349(a)(2) INA);

(3) entering or serving in the armed forces of a foreign state engaged in hostilities against the U.S. or serving as a commissioned or non-commissioned officer in the armed forces of a foreign state (Sec. 349(a)(3) INA);

(4) accepting employment with a foreign government if (a) one has the nationality of that foreign state or (b) a declaration of allegiance is required in accepting the position; (Sec. 349(a)(4) INA);

(5) formally renouncing U.S. citizenship before a U.S. consular officer outside the United States (Sec. 349(a)(5) INA);

(6) formally renouncing U.S. citizenship within the U.S. (but only "in time of war") (Sec. 349(a)(6) INA);

(7) conviction for an act of treason (Sec. 349 (a)(7) INA).

ADMINISTRATIVE STANDARD OF EVIDENCE

As already noted, the actions listed above can cause loss of U.S. citizenship only if performed voluntarily and with the intention of relinquishing U.S. citizenship. *The Department has a uniform administrative standard of evidence based on the premise that U.S. citizens intend to retain United States citizenship when they obtain naturalization in a foreign state, subscribe to routine declarations of allegiance to a foreign state, or accept non-policy level employment with a foreign government.*

DISPOSITION OF CASES WHEN ADMINISTRATIVE PREMISE IS APPLICABLE

In light of the administrative premise discussed above, a person who:

(1) is naturalized in a foreign country;

(2) takes a routine oath of allegiance; or

(3) accepts non-policy level employment with a foreign government

and in so doing wishes to retain U.S. citizenship need not submit prior to the commission of a potentially expatriating act a statement or evidence of his or her intent to retain U.S. citizenship since such an intent will be presumed.

When such cases come to the attention of a U.S. consular officer, the person concerned will be asked to complete a questionnaire to ascertain his or her intent toward U.S. citizenship. Unless the person affirmatively asserts in the questionnaire that it was his or her intention to relinquish U.S. citizenship, the consular officer will certify that it was *not* the person's intent to relinquish U.S. citizenship and, consequently, find that the person has retained U.S. citizenship.

DISPOSITION OF CASES WHEN ADMINISTRATIVE PREMISE IS INAPPLICABLE

The premise that a person intends to retain U.S. citizenship is *not* applicable when the individual:

(1) formally renounces U.S. citizenship before a consular officer;

(2) takes a policy level position in a foreign state;

(3) is convicted of treason; or

(4) preforms an act made potentially expatriating by statute accompanied by conduct which is so inconsistent with retention of U.S. citizenship that it compels a conclusion that the individual intended to relinquish U.S. citizenship. (Such cases are very rare.)

Cases in categories 2, 3, and 4 will be developed carefully by U.S. consular officers to ascertain the individual's intent toward U.S. citizenship.

PERSONS WHO WISH TO RELINQUISH U.S. CITIZENSHIP

An individual who has performed *any* of the acts made potentially expatriating by statute who wishes to lose U.S. citizenship may do so by affirming in writing to a U.S. consular officer that the act was performed with an intent to relinquish U.S. citizenship. Of course, a person always has the option of seeking to formally renounce U.S. citizenship in accordance with Section 349(a)(5) INA.

APPLICABILITY OF ADMINISTRATIVE PREMISE TO PAST CASES

The premise established by the administrative standard of evidence is applicable to cases adjudicated previously. Persons who previously lost U.S. citizenship may wish to have their cases reconsidered in light of this policy. A person may initiate such a reconsideration by submitting a request to the nearest U.S. consular office or by writing directly to:

Director, Office of Citizens Consular Services
(CA/OCS/CCS), Room 4811 NS
Department of State
Washington, DC 20520–4818

Each case will be reviewed on its own merits taking into consideration, for example, statements made by the person at the time of the potentially expatriating act.

DUAL NATIONALITY

When a person is naturalized in a foreign state (or otherwise possesses another nationality) and is thereafter found not to have lost U.S. citizenship the individual consequently may possess dual nationality. It is prudent, however, to check with authorities of the other country to see if dual nationality is permissible under local law. The United States does not favor dual nationality as a matter of policy, but does recognize its existence in individual cases.

QUESTIONS

For further information, please contact the appropriate geographic division of the Office of Citizens Consular Services:

Europe and Canada Division—(202) 647–3445.
Inter-American Division—(202) 647–3712.
East Asia and Pacific Division—(202) 647–3675.
Near Eastern and South Asia Division—(202) 647–3926.
Africa Division—(202) 647–4994.

DUAL NATIONALITY

What it is

Dual nationality is the simultaneous possession of two citizenships. The Supreme Court of the United States has stated that dual nationality is "a status long recognized in the law" and that "a person may have and exercise rights of nationality in two countries and be subject to the responsibilities of both. The mere fact that he asserts the rights of one citizenship does not without more mean that he renounces the other", *Kawakita* v. *U.S.*, 343 U.S. 717 (1952). The concepts discussed in this leaflet apply also to persons who have more than two nationalities.

How acquired

Dual nationality results from the fact that there is no uniform rule of international law relating to the acquisition of nationality. Each country has its own laws on the subject, and its nationality is conferred upon individuals on the basis of its own independent domestic policy. Individuals may have dual nationality not by choice but by automatic operation of these different and sometimes conflicting laws.

The laws of the United States, no less than those of other countries, contribute to the situation because they provide for acquisition of U.S. citizenship by birth in the United States and also by birth abroad to an American, regardless of the other nationalities which a person might acquire at birth. For example, a child born abroad to U.S. citizens may acquire at birth not only American citizenship but also the nationality of the country in which it was born. Similarly, a child born in the United States to foreigners may acquire at birth both U.S. citizenship and a foreign nationality.

The laws of some countries provide for automatic acquisition of citizenship after birth, for example, by marriage. In addition, some countries do not recognize naturalization in a foreign state as grounds for loss of citizenship. A person from one of those countries who is naturalized in the United States keeps the nationality of the country of origin despite the fact that one of the requirements for U.S. naturalization is a renunciation of other nationalities.

Current law and policy

The current nationality laws of the United States do not refer specifically to dual nationality.

The automatic acquisition or retention of a foreign nationality does not affect U.S. citizenship; however, under limited circumstances, the acquisition of a foreign nationality upon one's own application or the application of a duly authorized agent may cause loss of U.S. citizenship under Section 349(a)(1) of the Immigration and Nationality Act [8 U.S.C. 1481(a)(1)]. In order for loss of nationality to occur under Section 349(a)(1), it must be established that the naturalization was obtained voluntarily by a person eighteen years of age or older with the intention of relinquishing U.S. citizenship. Such an intention may be shown by the person's statements or conduct, *Vance* v. *Terrazas*, 444 U.S. 252 (1980), but in most cases it is assumed that Americans who are naturalized in other countries intend to keep their U.S. citizenship. As a result, they have both nationalities. United States law does not contain any provisions requiring U.S. citizens who are born with dual nationality to choose one nationality or the other when they become adults, *Mandoli* v. *Acheson*, 344 U.S. 133 (1952).

While recognizing the existence of dual nationality and permitting Americans to have other nationalities, the U.S. Government does not endorse dual nationality as a matter of policy because of the problems which it may cause. Claims of other countries upon dual-national U.S. citizens often place them in situations where their obligations to one country are in conflict with the laws of the other. In addition, their dual nationality may hamper efforts to provide diplomatic and consular protection to them when they are abroad.

Allegiance to which country

It generally is considered that while dual nationals are in the other country of which they are citizens that country has a predominant claim on them.

Like Americans who possess only U.S. citizenship, dual national U.S. citizens owe allegiance to the United States and are obliged to obey its laws and regulations. Such persons usually have certain obligations to the foreign country as well. Although failure to fulfill such obligations may have no adverse effect on dual nationals while in the United States because the foreign country would have few means to force compliance under those circumstances, dual nationals might be forced to comply with those obligations or pay a penalty if they go to the foreign country. In cases where dual nationals encounter difficulty in a foreign country of which they are citizens, the ability of U.S. Foreign Service posts to provide assistance may be quite limited since many foreign countries may not recognize a dual national's claim to U.S. citizenship.

Which passport to use

Section 215 of the Immigration and Nationality Act [8 U.S.C. 1185] requires U.S. citizens to use U.S. passports when entering or leaving the United States unless one of the exceptions listed in Section 53.2 of Title 22 of the Code of Federal Regulations applies. Dual nationals may be required by the other country of which they are citizens to enter and leave that country using its passport, but do not endanger their U.S. citizenship by complying with such a requirement.

How to give up dual nationality

Most countries have laws which specify how a citizen may lose or divest citizenship. Generally, persons who do not wish to maintain dual nationality may renounce the citizenship which they do not want. Information on renouncing a foreign nationality may be obtained from the foreign country's Embassies and Consulates or from the appropriate governmental agency in that country. Americans may renounce their U.S. citizenship abroad pursuant to Section 349(a)(5) of the Immigration and Nationality Act [8 U.S.C. 1481(a)(5)]. Information on renouncing U.S. citizenship may be obtained from U.S. Embassies and Consulates and the Office of Citizens Consular Services, Department of State, Washington, D.C. 20520.

For further information on dual nationality, see Marjorie M. Whiteman's *Digest of International Law* (Department of State Publication 8290, released September 1967), Volume 8, pages 64–84.

TAB 3

RENUNCIATION OF UNITED STATES CITIZENSHIP

United States citizens have the right to remain citizens until they intend to give up citizenship. It is also the right of every citizen to relinquish United States citizenship. Section 349(a) of the Immigration and Nationality Act [8 U.S.C. 1481] states:

> a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by voluntarily performing any of the following acts with the intention of relinquishing United States nationality: . . .
>
> (5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; or
>
> (6) making in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense. . . .

Renunciation is the most unequivocal way in which a person can manifest an intention to relinquish U.S. citizenship. In order for a renunciation under Section 349(a)(5) to be effective, all of the conditions of the statute must be met. In other words, a person wishing to renounce American citizenship must appear in person and sign an oath of renunciation before a U.S. consular or diplomatic officer abroad, generally at an American Embassy or Consulate. Renunciations which are not in the form prescribed by the Secretary of State have no legal effect. Because of the way in which Section 349(a)(5) is written and interpreted, Americans cannot effectively renounce their citizenship by mail, through an agent, or while in the United States.

Section 349(a)(6) provides for renunciation of United States citizenship under certain circumstances in the United States when the United States is in a state of war. Such a state does not currently exist. Questions concerning renunciation of American citizenship under Section 349(a)(6) should be addressed to the Attorney General.

Parents cannot renounce United States citizenship on behalf of their children. Before an oath of renunciation will be administered under Section 349(a)(5), persons under the age of eighteen must convince a U.S. diplomatic or consular officer that they fully understand the nature and consequences of the oath of renunciation and are voluntarily seeking to renounce their citizenship. Unites States common law establishes an arbitrary limit of age fourteen under which a child's understanding must be established by substantial evidence.

Under Section 351(b) of the Immigration and Nationality Act [8 U.S.C. 1483(b)], a person who renounced U.S. citizenship before the age of eighteen years and "who within six months after attaining the age of eighteen years asserts his claim to United States nationality in such manner as the Secretary of State shall by regulation prescribe, shall not be deemed to have expatriated himself. . . ." The relevant regulation is Section 50.20(b) of Title 22 of the Code of Federal Regulations which requires that the person take an oath of allegiance to the United States before a diplomatic or consular officer in order to retain U.S. citizenship.

Persons who contemplate renunciation of U.S. nationality should be aware that, unless they already possess a foreign nationality or are assured of acquiring another nationality shortly after completing their renunciation, severe hardship to them could result. In the absence of a second nationality, those individuals would become stateless. As stateless persons, they would not be entitled to the protection of any government. They might also find it difficult or impossible to travel as they would probably not be entitled to a passport from any country. Further, a person who has renounced U.S. nationality will be required to apply for a visa to travel to the United States, just as other aliens do. If found ineligible for a visa, a renunciant could be permanently barred from the United States. Renunciation of American citizenship does not necessarily prevent a former citizen's deportation from a foreign country to the United States.

Persons considering renunciation should also be aware that the fact that they have renounced U.S. nationality may have no effect whatsoever on their U.S. tax or military service obligations. Nor will it allow them to escape possible prosecution for crimes which they may have committed in the United States, or repayment of financial obligations previously incurred in the United States. Questions about these matters should be directed to the government agency concerned.

Finally, those contemplating a renunciation of U.S. citizenship should understand that renunciation is irrevocable, except as provided in Section 351 of the Immigration and Nationality Act, and cannot be cancelled or set aside absent successful administrative or judicial appeal.

IMMIGRATION AND NATIONALITY ACT

CHAPTER 3—LOSS OF NATIONALITY

LOSS OF NATIONALITY BY NATIVE-BORN OR NATURALIZED CITIZEN

SEC. 349. [8 U.S.C. 1481] (a) A person who is a national of the United States whether by birth or naturalization, shall lose his nationality by voluntarily performing any of the following acts with the intention of relinquishing United States nationality—

(1) obtaining naturalization in a foreign state upon his own application or upon an application filed by a duly authorized agent, after having attained the age of eighteen years; or

(2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof, after having attained the age of eighteen years; or

((3) entering, or serving in, the armed forces of a foreign state if (A) such armed forces are engaged in hostilities against the United States, or (B) such persons serve as a commissioned or non-commissioned officer; or

(4)(A) accepting, serving in, or performing the duties of any office, post, or employment under the government of an foreign state or a political subdivision thereof, after attaining the age of eighteen years if he has or acquires the nationality of such foreign state; or (B) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, after attaining the age of eighteen years for which office, post, or employment an oath, affirmation, or declaration of allegiance is required; or

(5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; or

(6) making in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense; or

(7) committing any act of treason against, or attempting by force to overthrow, or bearing arms against, the United States, violating or conspiring to violate any of the provisions of section 2383 of title 18, United States Code, or willfully performing any act in violation of section 2385 of title 18, United States Code, or violating section 2384 of said title by engaging in a conspiracy to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, if and when he is convicted thereof by a court martial or by a court of competent jurisdiction.

[Former subsection (b) was stricken by § 19(1) of Pub. L. 99–653 (Nov. 14, 1986, 100 Stat. 3658).]

(b) Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after the enactment of this subsection under, or by virtue of, the provisions of this or any other Act, the burden shall be upon the person or party claiming that such loss occurred, to establish such claim by a preponderance of the evidence. Any person who commits or performs, or who has committed or performed, any act of expatriation under the provisions of this or any other Act shall be presumed to have done so voluntarily, but such presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily.

[SEC. 350. Repealed.]

RESTRICTIONS ON EXPATRIATION [269]

SEC. 351. [8 U.S.C. 1483] (a) Except as provided in paragraphs (6) and (7) section 349(a) of this title, no national of the United States can expatriate himself, or be

[269] Section 1999 of the Revised Statutes of the United States (8 U.S.C. 1481 note) provides as follows: "Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and where-

expatriated, under this Act while within the United States or any of its outlying possessions, but expatriation shall result from the performance within the United States or any of its outlying possessions of any of the acts or the fulfillment of any of the conditions specified in this chapter if and when the national thereafter takes up a residence outside the United States and its outlying possessions.

(b) A national who within six months after attaining the age of eighteen years asserts his claim to United States nationality, in such manner as the Secretary of State shall by regulation prescribe, shall not be deemed to have expatriated himself by the commission, prior to his eighteenth birthday, of any of the acts specified in paragraphs (3) and (5) of section 349(a) of this title.

【Sections 352 to 355. Repealed.】

NATIONALITY LOST SOLELY FROM PERFORMANCE OF ACTS OR FULFILLMENT OF CONDITIONS

SEC. 356. 【8 U.S.C. 1488】 The loss of nationality under this chapter shall result solely from the performance by a national of the acts or fulfillment of the conditions specified in this chapter.

APPLICATION OF TREATIES; EXCEPTIONS

SEC. 357 【8 U.S.C. 1489】 Nothing in this title shall be applied in contravention of the provisions of any treaty or convention to which the United States is a party and which has been ratified by the Senate before December 25, 1952: *Provided, however,* That no woman who was a national of the United States shall be deemed to have lost her nationality solely by reason of her marriage to an alien on or after September 22, 1922, or to an alien racially ineligible to citizenship on or after March 3, 1931, or, in the case of a woman who was a United States citizen at birth, through residence abroad following such marriage, notwithstanding the provisions of any existing treaty or convention.

CHAPTER 4—MISCELLANEOUS

CERTIFICATE OF DIPLOMATIC OR CONSULAR OFFICER OF THE UNITED STATES AS TO LOSS OF AMERICAN NATIONALITY UNDER CHAPTER IV, NATIONALITY ACT OF 1940, OR UNDER CHAPTER 3 OF THIS TITLE

SEC. 358. 【8 U.S.C. 1501】 Whenever a diplomatic or consular officer of the United States has reason to believe that a person while in a foreign state has lost his United States nationally under any provision of chapter 3 of this title, or under any provision of chapter IV of the Nationality Act of 1940, as amended, he shall certify the facts upon which such belief is based to the Department of State, in writing, under regulations prescribed by the Secretary of State. If the report of the diplomatic or consular officer is approved by the Secretary of State, a copy of the certificate shall be forwarded to the Attorney General, for his information, and the diplomatic or consular office in which the report was made shall be directed to forward a copy of the certificate to the person to whom it relates.

CERTIFICATE OF NATIONALITY TO BE ISSUED BY THE SECRETARY OF STATE FOR A PERSON NOT A NATURALIZED CITIZEN OF THE UNITED STATES FOR USE IN PROCEEDINGS OF A FOREIGN STATE

SEC. 359. 【8 U.S.C. 1502】 The Secretary of State is hereby authorized to issue, in his discretion and in accordance with rules and regulations prescribed by him, a certificate of nationality for any person not a naturalized citizen of the United States who presents satisfactory evidence that he is an American national and that such certificate is needed for use in judicial or administrative proceedings in a foreign state. Such certificate shall be solely for use in the case for which it was issued and shall be transmitted by the Secretary of State through appropriate official channels to the judicial or administrative officers of the foreign state in which it is to be used.

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as in the recognition of this principle this Government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendants, are subjects of foreign states, owing allegiance to the governments thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: Therefore any declaration, instruction, opinion, order, or decision of any officer of the United States which denies, restricts, impairs, or questions the right of expatriation, is declared inconsistent with the fundamental principles of the Republic.".

PROCEEDINGS FOR DECLARATION OF UNITED STATES NATIONALITY IN THE EVENT OF DENIAL OF RIGHTS AND PRIVILEGES AS NATIONAL

SEC. 360 [8 U.S.C. 1503] (a) If any person who is within the United States claims a right or privilege as a national of the United States and is denied such right or privilege by any department or independent agency, or official thereof, upon the ground that he is not a national of the United States, such person may institute an action under the provisions of section 2201 of title 28, United States Code, against the head of such department or independent agency for a judgment declaring him to be a national of the United States, except that no such action may be instituted in any case if the issue of such person's status as a national of the United States (1) arose by reason of or in connection with any exclusion proceeding under the provisions of this or any other act, or (2) is in issue in any such exclusion proceeding. An action under this subsection may be instituted only within five years after the final administrative denial of such right or privilege and shall be filed in the district court of the United States for the district in which such person resides or claims a residence, and jurisdiction over such officials in such cases is hereby conferred upon those courts.

(b) If any person who is not within the United States claims a right or privilege as a national of the United States and is denied such right or privilege by any department or independent agency, or official thereof, upon the ground that he is not a national of the United States, such person may make application to a diplomatic or consular officer of the United States in the foreign country in which he is residing for a certificate of identity for the purpose of traveling to a port of entry in the United States and applying for admission. Upon proof to the satisfaction of such diplomatic or consular officer that such application is made in good faith and has a substantial basis, he shall issue to such person a certificate of identity. From any denial of an application for such certificate the applicant shall be entitled to an appeal to the Secretary of State, who, if he approves the denial, shall state in writing his reasons for his decision. The Secretary of State shall prescribe rules and regulations for the issuance of certificates of identity as above provided. The provisions of this subsection shall be applicable only to a person who at some time prior to his application for the certificate of identity has been physically present in the United States, or to a person under sixteen years of age who was born abroad of a United States citizen parent.

(c) A person who has been issued a certificate of identity under the provisions of subsection (b), and while in possession thereof, may apply for admission to the United States at any port of entry, and shall be subject to all the provisions of this Act relating to the conduct of proceedings involving aliens seeking admission to the United States. A final determination by the Attorney General that any such person is not entitled to admission to the United States shall be subject to review by any court of competent jurisdiction in habeas corpus proceedings and not otherwise. Any person described in this section who is finally excluded from admission to the United States shall be subject to all the provisions of this Act relating to aliens seeking admission to the United States.

FUNCTIONS OF U.S. CONSULS ABROAD

U.S. consular officers are located at U.S. embassies and consulates in most countries overseas. They are available to advise and help American citizens abroad, especially if they are in any kind of serious trouble. This includes, for example, arrests, medical and financial emergencies and missing persons and death cases. Consuls are responsive to the needs of U.S. citizens traveling or residing abroad. However, they must devote most of their time and energies on a priority basis to those Americans who are experiencing serious legal, medical, or financial difficulties. Consuls also provide non-emergency services such as information on absentee voting, Selective Service registration, "travel advisories" and acquisition and loss of U.S. citizenship. They can arrange for the transfer of social security and other benefits to beneficiaries residing abroad; provide U.S. tax forms and notarize documents. Consuls can also assist in serving process upon overseas defendants in Federal criminal cases, obtain evidence abroad for use in litigation in the United States, advise on child custody matters, property claims, how to obtain foreign public documents and act as provisional conservators in the estates of deceased Americans abroad.

A consular officer can not conduct an investigation, arrest the perpetrator of a crime against a U.S. citizen, locate stolen property, or act as an attorney, agent or in a fiduciary capacity on behalf of a U.S. citizen who is the victim of a crime. A consular officer can, however, ensure that a citizen receives available medical care and provide subsistence, when appropriate, until financial assistance can be transmitted by the injured party's family or friends through the Office of Overseas Citizens Services of the Department of State. In addition, the consul can issue a replacement passport, when necessary, upon verification of the party's citizenship and identity. Further, acting as liaison with the local police department, the consul can keep citizens informed as to the progress of any police investigation into crimes against them and advise injured parties of the need to return to the foreign country to testify at any future trial, usually at the expense of the host government.

TAB 4

THE ROLE OF THE BUREAU OF CONSULAR AFFAIRS WITHIN THE DEPARTMENT OF STATE

The Department of State advises the President in the formulation and execution of foreign policy. The Department determines and analyzes the facts relating to American overseas interests, makes recommendations on policy and future action, and takes the necessary steps to carry out established policy. In so doing, the Department engages in continuous consultations with the American public, the Congress, other U.S. departments and agencies, and foreign governments. The Department also negotiates treaties and agreements with foreign nations. The United States maintains some 250 embassies, consulates and missions which implement U.S. policy abroad.

The Department of State is divided into 19 bureaus, each headed by an Assistant Secretary of State. There are five geographic bureaus that are responsible for U.S. foreign relations in the major regions of the world. Responsibilities of the other 14 functional bureaus cross geographic lines.

Bureau of Consular Affairs

The Bureau of Consular Affairs, under the direction of the Assistant Secretary, is a functional bureau which administers and enforces the provisions of the immigration and nationality laws as they concern the Department and the Foreign Service. The Bureau is also responsible for the protection and welfare of American citizens and interests abroad, passport issuance, visas and related services.

Consular officers in the Department and at embassies and consulates abroad provide a wide range of services for Americans. Consular officers abroad, with guidance and assistance from the Department, advise and help American citizens, especially in crises such as arrests, medical and financial emergencies, missing persons, and deaths. Consular officers devote much of their time and energies to assist those Americans who experience serious legal, medical, or financial difficulties. They often act as provisional conservator of the estates of deceased Americans abroad.

Consular officers also provide information on absentee voting, Selective Service registration, and acquisition and loss of U.S. citizenship. They can arrange for the transfer of social security and other benefits to Americans residing abroad, provide U.S. tax forms and notarize documents. Consuls serve process upon overseas defendants in Federal criminal cases and obtain evidence abroad for use in U.S. courts. They assist citizens in obtaining available medical care and may provide interim subsistence pending receipt of financial assistance from family or friends. While consular officers are prohibited from conducting an investigation, arresting individuals, or acting as an attorney, agent or in a fiduciary capacity on behalf of U.S. citizens abroad, they do assist Americans in obtaining these services.

TAB 5

IMMIGRATION AND NATIONALITY ACT

TITLE III—NATIONALITY AND NATURALIZATION

CHAPTER 1—NATIONALITY AT BIRTH AND BY COLLECTIVE NATURALIZATION

NATIONALS AND CITIZENS OF THE UNITED STATES AT BIRTH [238]

SEC. 301.[239] [8 U.S.C. 1401] The following shall be nationals and citizens of the United States at birth:

(a) a person born in the United States, and subject to the jurisdiction thereof;

(b) a person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe: *Provided,* That the granting of citizenship under this subsection shall not in any manner impair or otherwise affect the right of such person to tribal or other property;

(c) a person born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has had a

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[238] Section 506(b) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States, shown in Appendix V.A. 1., made this section applicable to children born abroad to United States citizens or non-citizen national parents permanently residing in the Northern Mariana Islands.

[239] HISTORICAL NOTE.—Preivous to 1978, section 301 required that a person born abroad of a U.S. citizen parent and an alien parent must be physically present in the United States for a particular period of time in order to retain United States citizenship. Subsection (b) of this section provided for a five-year period of continuous residence as follows:

(b) Any person who is a national and citizen of the United States at birth under paragraph (7) of subsection (a), shall lose his nationality and citizenship unless he shall come to the United States prior to attaining the age of twenty-three years and shall immediately following any such coming be continuously physically present in the United State[s] for at least five years: *Provided,* That such physical presence follows the attainment of the age of fourteen years and precedes the age of twenty-eight years.

Subsection (c) of this section clarified that this requirement only applied to aliens born abroad after May 24, 1934:

(c) Subsection (b) shall apply to a person born abroad subsequent to May 24, 1934: *Provided, however,* That nothing contained in this subsection shall be construed to alter or affect the citizenship of any person born abroad subsequent to May 24, 1934, who, prior to the effective date of this Act, has taken up a residence in the United States before attaining the age of sixteen years, and thereafter, whether before or after the effective date of this Act, complies or shall comply with the residence requirements for retention of citizenship specified in subsections (g) and (h) of section 201 of the Nationality Act of 1940, as amended.

Section 16 of the Act of September 11, 1957 (71 Stat. 644) provided a rule for determining continuity of residence as follows: "In the administration of section 301(b) of the Immigration and Nationality Act, absences from the United States of less than twelve months in the aggregate, during the period for which continuous physical presence in the United States is required, shall not be considered to break the continuity of such physical presence."

Public Law 92–584 (Oct. 27, 1972, 86 Stat. 1289) amended these provisions by rewriting subsection (b) to provide for only a two year residency requirement as follows:

(b) Any person who is a national and citizen of the United States under paragraph (7) of subsection (a) shall lose his nationality and citizenship unless—(1) he shall come to the United States and be continuously physically present therein for a period of not less than two years between the ages of fourteen years and twenty-eight years; or (2) the alien parent is naturalized while the child is under the age of eighteen years and the child begins to reside permanently in the United States while under the age of eighteen years. In the administration of this subsection absences from the United States of less than sixty days in the aggregate during the period for which continuous physical presence in the United States is required shall not break the continuity of such physical presence.

That Public Law also repealed section 16 of the Act of September 11, 1957, and added a new subsection (d), as a savings clause for those complying with the previous law:

(d) Nothing contained in subsection (b), as amended, shall be construed to alter or affect the citizenship of any person who has come to the United States prior to the effective date of this subsection and who, whether before or after the effective date of this subsection, immediately following such coming complies or shall comply with the physical presence requirements for retention of citizenship specified in subsection (b) prior to its amendment and the repeal of section 16 of the Act of September 11, 1957.

These amendments applied to aliens born abroad after May 24, 1934.

The first section of Public Law 95–432 (Oct. 10, 1978, 92 Stat. 1046), effective October 10, 1978, repealed subsections (b), (c), and (d), thus eliminating the residence requirement for retention of United States citizenship. This change was effective on October 10, 1978, and is prospective in nature (viz., it does not reinstate as citizens those who had lost citizenship under section 301(b) as previously in effect). See H. Rept. 95–1493 (95th Cong.), to accompany H.R. 13349, p.2.

residence in the United States or one of its outlying possessions, prior to the birth of such person;

(d) a person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who has been physically present in the United States or one of its outlying possessions for a continuous period of one year prior to the birth of such person, and the other of whom is a national, but not a citizen of the United States;

(e) a person born in an outlying possession of the United States of parents one of whom is a citizen of the United States who has been physically present in the United States or one of its outlying possessions for a continuous period of one year at any time prior to the birth of such person;

(f) a person of unknown parentage found in the United States while under the age of five years, until shown, prior to his attaining the age of twenty-one years, not to have been born in the United States;

(g) [240] a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two [241] of which were after attaining the age of fourteen years: *Provided,* That any periods of honorable service in the Armed Forces of the United States, or periods of employment with the United States Government or with an international organization as that term is defined in section 1 of the International Organizations Immunities Act (59 Stat. 669; 22 U.S.C. 288) by such citizen parent, or any periods during which such citizen parent is physically present abroad as the dependent unmarried son or daughter and a member of the household of a person (A) honorably serving with the Armed Forces of the United States, or (B) employed by the United States Government or an international organization as defined in section 1 of the International Organizations Immunities Act, may be included in order to satisfy the physical-presence requirement of this paragraph. This proviso shall be applicable to persons born on or after December 24, 1952, to the same extent as if it had become effective in its present form on that date.

PERSONS BORN IN PUERTO RICO ON OR AFTER APRIL 11, 1899

SEC. 302. [8 U.S.C. 1402] All persons born in Puerto Rico on or after April 11, 1899, and prior to January 13, 1941, subject to the jurisdiction of the United States, residing on January 13, 1941, in Puerto Rico or other territory over which the United States exercises rights of sovereignty and not citizens of the United States under any other Act, are hereby declared to be citizens of the United States as of January 13, 1941. All persons born in Puerto Rico on or after January 13, 1941, and subject to the jurisdiction of the United States, are citizens of the United States at birth.

PERSONS BORN IN THE CANAL ZONE OR REPUBLIC OF PANAMA ON OR AFTER FEBRUARY 26, 1904

SEC. 303. [8 U.S.C. 1403] (a) Any person born in the Canal Zone on or after February 26, 1904, and whether before or after the effective date of this Act,[242] whose father or mother or both at the time of the birth of such person was or is a citizen of the United States, is declared to be a citizen of the United States.

(b) Any person born in the Republic of Panama on or after February 26, 1904, and whether before or after the effective date of this Act, whose father or mother or both at the time of the birth of such person was or is a citizen of the United States employed by the Government of the United States or by the Panama Railroad Company, or its successor in title, is declared to be a citizen of the United States.

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[240] The Act of March 16, 1956 (70 Stat. 50; 8 U.S.C. 1401a), provides as follows:

That section 301(g) of the Immigration and Nationality Act shall be considered to have been and to be applicable to a child born outside of the United States and its outlying possessions after January 12, 1941, and before December 24, 1952, of parents one of whom is a citizen of the United States who has served in the Armed Forces of the United States after December 31, 1946, and before December 24, 1952, and whose case does not come within the provisions of section 201 (g) or (i) of the Nationality Act of 1940.

[241] § 12 of the Immigration and Nationality Act Amendments of 1986 (Pub. L. 99–653, Nov. 14, 1986, 100 Stat. 3657) substituted "five years, at least two" for "ten years, at least five", effective for persons born on or after November 14, 1986.

[242] The effective date of this Act is December 24, 1952.

PERSONS BORN IN ALASKA ON OR AFTER MARCH 30, 1867

SEC. 304. [8 U.S.C. 1404] A person born in Alaska on or after March 30, 1867, except a noncitizen Indian, is a citizen of the United States at birth. A noncitizen Indian born in Alaska on or after March 30, 1867, and prior to June 2, 1924, is declared to be a citizen of the United States as of June 2, 1924. An Indian born in Alaska on or after June 2, 1924, is a citizen of the United States at birth.

PERSONS BORN IN HAWAII

Sec. 305. [8 U.S.C. 1405] A person born in Hawaii on or after August 12, 1898, and before April 30, 1900, is declared to be a citizen of the United States as of April 30, 1900. A person born in Hawaii on or after April 30, 1900, is a citizen of the United States at birth. A person who was a citizen of the Republic of Hawaii on * * *

TAB 6

UNITED STATES DEPARTMENT OF STATE
FOREIGN SERVICE OF THE UNITED STATES OF AMERICA

CERTIFICATE OF LOSS OF NATIONALITY OF THE UNITED STATES

This form is prescribed by the Secretary of State pursuant to Section 501 of the Act of October 14, 1940 (54 Stat. 1171) and Section 358 of the Act of June 27, 1952 (66 Stat. 272).

DEPARTMENT USE ONLY

Consulate ____________ of the United States of America

ss:

at ______________________

I ______________________,
(Name)

hereby certify that, to the best of my knowledge and belief,

____
(Name)

was born at ____________, ____________,
(Town or City) (Province or County)

____________, on ____________.
(State or Country) (Date)

That he (never) resided in the United States (dates): ____________

That he resides at ____________

That he acquired the nationality of the United States by virtue of ____________

____

That he acquired the nationality of ____________ by virtue of

____

That he ______________________
(The action causing expatriation should be set forth succinctly)

____

That he thereby expatriated ____ self on ____________ under the provisions of Section ____________ of (the Nationality Act of 1940)* (the Immigration and Nationality Act of 1952)*

That the evidence of such action consists of the following:

That attached to and made a part of this certificate are the following documents or ____________ copies thereof:

In testimony whereof, I have hereunto subscribed by name and affixed my office seal this ________ day of ____________, 19____.

____
(Signature)

(SEAL)

____
(Title)

*Strike out inapplicable item.

FORM FS-348
10-85

SEE REVERSE FOR APPEAL PROCEDURES

Appeal Procedures

Any holding of loss of United States nationality may be appealed to the Board of Appellate Review of the Department of State within one year after approval of the certificate of loss of nationality. The regulations governing appeals are set forth at Title 22 of the Code of Federal Regulations, Part 7. Notice of appeal should be addressed to the Board of Appellate Review, and may be submitted through an American Embassy or Consulate or through an authorized attorney in the United States or directly to the Board of Appellate Review, Department of State, Washington, D.C. 20520.

The appeal must be in writing and it must state with particularity the reason why it is being made. It may be accompanied by a legal brief. Any statement of facts or circumstances not mentioned when the case was previously considered should be sworn to before an official authorized to take oaths and should be supported by the best evidence obtainable.

For additional information about appeal procedures and to obtain copies of the relevant provisions of the Code of Federal Regulations, consult the nearest American Embassy or Consulate or write to the Board of Appellate Review, Department of State, Washington, D.C. 20520.

OATH OF RENUNCIATION OF THE NATIONALITY OF THE UNITED STATES

(This form has been prescribed by the Secretary of State pursuant to Section 349(a)(5) of the Immigration and Nationality Act, 66 Stat. 268 as amended by Public Law 95-432, October 10, 1978, 92 Stat. 1046.)

Embassy/~~Consulate General~~ of the United States of America at London, England

ss:

I, ______________________ (name), a national of the

United States solemnly swear that I was born at ______________ (City)

______________________ (Province or Country), ______________________ (State or Country),

on ______________________ (Date of Birth).

That I formerly resided in the United States at: ______________ (Street)

______________ (City) ______________ (State)

That I am a national of the United States by virtue of:

____

(If a national by birth in the United States, or abroad, so state:

If naturalized, give the name and place of the court in the United States

before which naturalizaton was granted and the date of such naturalization)

That I desire to make a formal renunciation of my American nationality, as provided by Section 349(a)(5) of the Immigration and Nationality Act and pursuant thereto I hereby absolutely and entirely, renounce my United States nationality together with all rights and privileges and all duties of allegiance and fidelity thereunto pertaining.

______________________ (Signature)

Subscribed and sworn to before me this 3rd day of December

19 90 , in the American Embassy/~~Consulate General~~ at London, England

SEAL

______________________ (Signature of officer)

______________________ (Typed Name of officer)

Consul of the United States of America

(Title of officer)

STATEMENT OF UNDERSTANDING

I, ______________________________ understand that:
(Name)

1. I have the right to renounce my United States citizenship.

2. I am exercising my right of renunciation freely and voluntarily without any force, compulsion, or undue influence placed upon me by any person.

3. Upon renouncing my citizenship I will become an alien with respect to the United States, subject to all the laws and procedures of the United States regarding entry and control of aliens.

4. My renunciation may not affect my military or Selective Service status, if any, and may not exempt me from income taxation. I understand that any problems in these areas must be resolved with the appropriate agencies.

5. My renunciation may not affect my liability, if any, to prosecution for any crimes which I may have committed or may commit in the future which violate United States law.

6. If I do not possess the nationality of any country other than the United States, upon my renunciation I will become a stateless person and may face extreme difficulties in travelling internationally and entering most countries.

7. If I am found to be deportable by a foreign country, my renunciation may not prevent my involuntary return to the United States.

8. The extremely serious and irrevocable nature of the act of renunciation has been explained to me by (~~Vice~~) Consul ________________
(Name)

________________ at the American Embassy/~~Consulate General~~ at ________________________ I fully understand its consequences.

I (~~do not~~) choose to make a separate written explanation of my reasons for renouncing my United States citizenship. I (swear, affirm) that I have
(Circle one verb)
(read, had read to me) this Statement in the English language and fully
(Circle one verb)
understand its contents.

____
(Signature)

____
(Renunciant's typed name)

____________________________________ appeared personally and
(name) her
(read, had read to ~~him~~) this Statement after my explanation of its meaning
(Circle one verb)

and the consequences of renunciation of United States citizenship and

signed this Statement (under oath, by affirmation) before me this
(Circle one verb)

~~1st~~ day of ~~November~~ 19 ~~[illegible]~~
(Day of month) (Month) (Year)

Seal

____
(~~Vice~~) Consul of the United States of America

WITNESSES' ATTESTATION

The undersigned persons certify that they witnessed the personal appearance

of ________________________________ before the consular officer
(name)

____________________________________ who explained the
(name)

seriousness and consequences of renunciation of United States citizenship

and the meaning of the attached Statement of Understanding, after which

this Statement was signed (under oath, by affirmation) before the named
(Circle one verb)

consular officer and undersigned witnesses this
__________ day of ____________________ 19___
(Day of month) (Month) (Year)

Witness ____________________ _________________________
(Full name) (Complete address)

Witness ____________________ _________________________
(Full name) (Complete address)

TAB 7

26 U.S.C. § 6039E

§ 6039E. Information concerning resident status

(a) GENERAL RULE.—Notwithstanding any other provision of law, any individual who—

(1) applies for a United States passport (or a renewal thereof), or

(2) applies to be lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws,

shall include with any such application a statement which includes the information described in subsection (b).

(b) INFORMATION TO BE PROVIDED.—Information required under subsection (a) shall include—

(1) the taxpayer's TIN (if any),

(2) in the case of a passport applicant, any foreign country in which such individual is residing.

(3) in the case of an individual seeking permanent residence, information with respect to whether such individual is required to file a return of the tax imposed by chapter 1 for such individual's most recent 3 taxable years, and

(4) such other information as the Secretary may prescribe.

(c) PENALTY.—Any individual failing to provide a statement required under subsection (a) shall be subject to a penalty equal to $500 for each such failure, unless it is shown that such failure is due to reasonable cause and not to willful neglect.

(d) INFORMATION TO BE PROVIDED TO SECRETARY.—Notwithstanding any other provision of law, any agency of the United States which collects (or is required to collect) the statement under subsection (a) shall—

(1) provide any such statement to the Secretary, and

(2) provide to the Secretary the name (and any other identifying information) of any individual refusing to comply with the provisions of subsection (a).

Nothing in the preceding sentence shall be construed to require the disclosure of information which is subject to section 245A of the Immigration and Nationality Act (as in effect on the date of the enactment of this sentence).

(e) EXEMPTION.—The Secretary may by regulations exempt any class of individuals from the requirements of this section if he determines that applying this section to such individuals is not necessary to carry out the purposes of this section. (Added Pub. L. 99–514, Title XII, § 1234(a)(1), Oct. 22, 1986, 100 Stat. 2565, and amended Pub. L. 100–647, Title I, § 1012(*o*), Nov. 10, 1988, 102 Stat. 3515.)

HISTORICAL AND STATUTORY NOTES

REVISION NOTES AND LEGISLATIVE REPORTS

1986 Act. House Conference Report No. 99–841 and Statement by President, see 1986 U.S. Code Cong. and Adm. News, p. 4075.

1988 Act. Senate Report No. 100–445 and House Conference Report No. 100–1104, see 1988 U.S. Code Cong. and Adm. News, p. 4515.

REFERENCES IN TEXT

Section 245A of the Immigration and Nationality Act, referred to in subsec. (d), is classified to section 1255a of Title 8, Aliens and Nationality.

The date of the enactment of this sentence, referred to in subsec. (d), is the date of the enactment of Pub. L. 100–647, which was approved on Nov. 10, 1988.

AMENDMENTS

1988 Amendment. Subsec. (d). Pub. L. 100–647 added provision relating to disclosure of information subject to section 245A of the Immigration and Nationality Act.

EFFECTIVE DATES

1988 Act. Amendment by Pub. L. 100–647 effective as if included in the provision of Pub. L. 100–514 to which such amendment relates, see section 1019 of Pub. L. 100–647, set out as a note under section 1 of this title.

1986 Act. Section 1234(a)(3) of Pub. L. 99–514 provided that: "The amendments made by this subsection [enacting this section] shall apply to applications submitted after December 31, 1987 (or, if earlier, the effective date which shall not be earlier

than January 1, 1987) of the initial regulations issued under section 6039E of the Internal Revenue Code of 1986 as added by this subsection [this section]).”

TAB 8

SECTION 201 OF THE TAX COMPLIANCE ACT OF 1995: CONSISTENCY WITH INTERNATIONAL HUMAN RIGHTS LAW

MEMORANDUM OF THE DEPARTMENT OF STATE SUBMITTED FOR THE RECORD BY THE DEPARTMENT OF THE TREASURY*

The Department of State believes that Section 201 of the proposed Tax Compliance Act of 1995 is consistent with international human rights law, on the basis of information provided by the Department of the Treasury that persons affected would have the means to pay the tax and that such taxes would not be more burdensome than those they would pay if they were to remain U.S. citizens. As described below, closing a loophole that allows extremely wealthy people to evade U.S. taxes through renunciation of their American citizenship does not violate any internationally recognized right to leave one's country. It is inaccurate on legal and policy grounds to suggest that the Administration's proposal is analogous to efforts by totalitarian regimes to erect financial and other barriers to prevent their citizens from leaving. The former Soviet Union, for example, sought to impose such barriers only on people who wanted to leave, and not on those who stayed. In contrast, Section 201 seeks to equalize the tax burden born by all U.S. citizens by ensuring that all pay taxes on gains above $600,000 that accrue during the period of their citizenship. Unlike the Soviet effort to discriminate against people who sought to leave, we understand from Treasury that Section 201 does not treat those who renounce their U.S. citizenship less favorably than those who remain U.S. citizens.

Section 201 would require payment of taxes by U.S. citizens and long-term residents on gains above $600,000 that accrue immediately prior to renunciation of their U.S. citizenship or long-term residency status. We understand that these tax requirements are no more burdensome than those that they would face if they remained U.S. citizens or residents at the time they realized their gains or at death. While U.S. tax policy generally allows taxpayers to defer gains until they are realized or included in an estate, we further understand that Section 201 treats renunciation as a taxable event because such act effectively removes the underlying assets from U.S. taxing jurisdiction.

International law recognizes the right of all persons to leave any country, including their own, subject to certain limited restrictions. Article 12(2) of the International Covenant on Civil and Political Rights provides that: "Everyone shall be free to leave any country, including his own." Article 12(3) states that the right "shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant."

Section 201 does not affect a person's right to leave the United States. Any tax obligations incurred under Section 201 would be triggered by the act of renunciation of U.S. citizenship, and not by the act of leaving the United States. In addition, since during peacetime U.S. citizens must be outside the United States to renounce their citizenship (*see* 8 U.S.C. §§ 1481(a)(5), 1483(a)) the persons affected by Section 201 would have already left the United States. Renunciation does not preclude them from returning to the United States as aliens and subsequently leaving U.S. territory. Accordingly, Section 201 does not affect a person's right or ability to leave the United States.

Inherent in the right to leave a country is the ability to leave permanently, *i.e.*, to emigrate to another country willing to accept the person. The proposed tax is as unconnected to emigration as it is to the right to leave the United States on a temporary basis. It is not the act of emigration that triggers tax liability under Section 201, but the act of renunciation of citizenship. These two acts are not synonymous and should not be confused with one another. Because the United States allows its citizens to maintain dual nationality, U.S. citizens may emigrate to another country and retain their U.S. citizenship. Hence, the act of emigration itself does not generate tax liability under Section 201. Indeed, we understand from the Department of the Treasury that some of the people potentially affected by Section 201 already maintain several residences abroad and hold foreign citizenship. Moreover, in stark contrast to most emigrants, particularly those fleeing totalitarian regimes, it is reported that some continue to spend up to 120 days each year in the United States after they have renounced their citizenship.

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*Submitted at the Hearing Before the Subcommittee on Oversight, Committee on Ways and Means, March 27, 1995.

While emigration from the United States should not be confused with renunciation of U.S. citizenship, it should nonetheless be noted that it is well established that a State can impose economic controls in connection with departure so long as such controls do not result in a *de facto* denial of emigration. As Professor Hurst Hannum notes in commenting on the restrictions on the right to leave set forth in Article 12 of the Covenant:

"Economic controls (currently restrictions, taxes, and deposits to guarantee repatriation) should not result in the *de facto* denial of an individual's right to leave . . . If such taxes are to be permissible, they must be applied in a non-discriminatory manner and must not serve merely as a pretext for denying the right to leave to all or a segment of the population (for example, by requiring that a very high 'education tax' be paid in hard currency in a country in which possession of hard currency is illegal)." [1]

A wealthy individual who is free to travel and live anywhere in the world, irrespective of nationality, is in no way comparable to that of a persecuted individual seeking freedom who is not even allowed to leave his or her country for a day. In U.S. law, the Jackson-Vanik amendment to the Trade Act of 1974 (19 U.S.C. § 2432) is aimed at this latter case and applies to physical departure, not change of nationality. Examples of States' practices that have been considered to interfere with the ability of communist country citizens to emigrate include imposing prohibitively high taxes specifically applied to the act of emigration with no relation to an individual's ability to pay, or disguised as "education taxes" to recoup the State's expenses in educating those seeking to depart permanently. Such practices also include punitive actions, intimidation or reprisals against those seeking to emigrate (e.g., firing the person from his or her job merely for applying for an exit visa). It is these offensive practices that the Jackson-Vanik amendment is designed to eliminate and thereby ensure that the citizens of these countries can exercise their right to leave. (*See* Tab A for further analysis of the Jackson-Vanik amendment.)

The only international human rights issue that is relevant to analysis of Section 201 is whether an internationally recognized right to change citizenship exists and, if so, whether Section 201 is consistent with it. The Universal Declaration of Human Rights, which is in many respects considered reflective of customary international law, provides in Article 15(2) that: *"No one shall be arbitrarily* deprived of his nationality nor *denied the right to change his nationality"* (emphasis added).[2] Although many provisions of the Universal Declaration have been incorporated into international law, for example in the International Covenant on Civil and Political Rights, Article 15(2) is not. Accordingly, the question arises whether this provision could be considered to be customary international law.

States' views on this question and practices do vary. Many countries have laws governing the renunciation of citizenship, but renunciation is not guaranteed because they have also established preconditions and restrictions, or otherwise subject the request to scrutiny.[3] Professor Ian Brownlie has commented on Article 15(2) in the context of expatriation that: "In the light of existing practice, however, the individual does not have this right, although the provision in the Universal Declaration may influence the interpretation of internal laws and treaty rules." [4] Others agree with this position. (*See Restatement of the Foreign Relations Law of the United States,* § 211, Reporters' Note 4). Nonetheless, the United States believes that individuals do have a right to change their nationality. The U.S. Congress took the view in 1868 that the "right of expatriation is a natural and inherent right of all people" in order to rebut claims from European powers that "such American citizens, with

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[1] H. Hannum, *The Right to Leave and Return in International Law and Practice* 39–40 (1987).

[2] Article XIX of the American Declaration on the Rights and Duties of Man provides that: "Every person has the right to the nationality to which he is entitled by law and to change it, if he so wishes, for the nationality of any other country that is willing to grant it to him." The American Declaration is not a legally binding document.

[3] *See Coumas* v. *Superior Court in and for San Joaquin County (People, Intervenor),* 192 P.2d 449, 451 (Sup. Ct. Calif. 1948). When confronted with Greek refusal to consent to an expatriation, the Supreme Court of California stated: ". . . The so-called American doctrine of 'voluntary expatriation' as a matter of absolute right cannot postulate loss of original nationality on naturalization in this country as a principle of international law, for that would be tantamount to interference with the exclusive jurisdiction of a nation within its own domain."

[4] I. Brownlie, *Principles of International Law* (4th ed.) 557 (1990). Professor Lillich comments that "the right protected in [Article 15] has received very little subsequent support from states and thus can be regarded as one of the weaker rights . . . ." "Civil Rights," in T. Meron, *Human Rights in International Law* at 153–54 (1988).

their descendants, are subjects of foreign states, owing allegiance to the governments thereof . . . ." (Rev. Stat. § 1999).

It is evident, however, that States do not recognize an unqualified right to change nationality. It is generally accepted, for example, that a State can require that a person seeking to change nationality fulfill obligations owed to the State, such as pay taxes due or perform required military service.[5] This is especially true where the requirement is by its nature proportional to the means to pay, and thus does not present a financial barrier, which we understand from Treasury is the case here.

The consistency between Section 201 and international human rights law is further demonstrated by the practice of countries that are strong supporters of international human rights and that have adopted similar tax policies. According to the Report prepared by the Staff of the Joint Committee on Taxation, Germany imposes an "extended tax liability" on German citizens who emigrate to a tax-haven country or do not assume residence in any country and who maintain substantial economic ties to Germany. Australia imposes a tax when an Australian resident leaves the country, such person is treated as having sold all of his or her non-Australian assets at fair market value at the time of departure. To provide another example, Canada considers a taxpayer to have disposed of all capital gain property at its fair market value upon the occurrence of certain events, including relinquishment of residency.

Accordingly, to the extent that Section 201 imposes taxes on persons who have the ability to pay and that are no more burdensome than those they would pay if they remained U.S. citizens, it would not raise human rights concerns with respect to change of citizenship for two reasons. First, U.S. citizen would remain free to choose to change their citizenship. This proposal does not in any way preclude such choice, even indirectly. We understand from Treasury that any tax owed, by its nature, applies only to gains and thus should not exceed an individual's ability to pay. Second, international law would not proscribe reasonable consequences of relinquishment, such as liability for U.S. taxes that accrue during the period of citizenship. We understand from the Department of the Treasury that the imposition of taxes under Section 201 would be equitable, reasonable and consistent with overall U.S. tax policy because the provision applies only to gains that accrued during the period of citizenship in excess of $600,000; the tax rate is consistent with other tax rates; and affected persons would have the financial means to pay the tax, either immediately or on a deferred basis. Obviously, there is no international right to avoid paying taxes by changing one's citizenship.

In conclusion, it is the view of the Department of State that, based on the information described above, Section 201 does not violate international human rights law. Accordingly, the debate on the merits of Section 201 should focus solely on domestic tax policies and priorities.

TAB A

Section 201 of the proposed Tax Compliance Act of 1995 does not conflict with the Jackson-Vanik amendment to the Trade Act of 1974 (19 U.S.C. § 2432). That amendment restricts granting most-favored-nation treatment and certain trade related credits and guarantees to a limited number of nonmarket economics that unduly restrict the emigration of their nationals. Specifically, it applies to any nomarket economy which:

> "(1) denies its citizens the right or opportunity to emigrate;
>
> "(2) imposes more than a nominal tax on emigration or on the visas or other documents required for emigration, for any purpose or cause whatsoever; or
>
> "(3) imposes more than a nominal tax, levy, fine, fee or other charge on any citizen as a consequence of the desire of such citizen to emigrate to the country of his choice . . . ."

This provision, according to the Senate Finance Committee, was "intended to encourage free emigration of all peoples from all communist countries (and not be restricted to any particular ethnic, racial, or religious group from any one country)." (1974 U.S.C.C.A.N. 7338.) These countries were expected to "provide reasonable assurances that freedom of emigration will be a realizable goal" if they were to enter into bilateral trade agreements with the United States. (*Id.*)

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[5] A State should not, for example, withhold discharge from nationality if, *inter alia*, acquisition of the new nationality has been sought by the person concerned in good faith and the discharge would not result in failure to perform specific obligations owed to the State. P. Weis, *Nationality and Statelessness in International Law* (2nd ed.) 133 (1979). In *Coumas*, *supra* note 3, the Supreme Court of California observed that Greece qualified the right of expatriation on fulfillment of military duties and procurement of consent of the Government.

The amendment does not apply to emigration from the United States or to the renunciation of U.S. citizenship. It has been suggested, however, that Section 201 would somehow conflict with the "spirit" or the "principles" of the Jackson-Vanik amendment. The Department of State does not agree with such proposition.

Generally, in implementing this statute, the President makes determinations concerning a nonmarket economy's compliance with freedom of emigration principles contained in the amendment. Such determinations take into account the country's statutes and regulations, and how they are implemented day to day, as well as their net effect on the ability of that country's citizens to emigrate freely. The President may, by Executive Order, waive the prohibitions of the Jackson-Vanik amendment if he reports to Congress that a waiver will "substantially promote" the amendment's freedom of emigration objectives, and that he has received assurances from the country concerned that its emigration practices "will henceforth lead substantively to the achievement" of those objectives. (19 U.S.C. § 2431(c).)

Several types of State practices have been considered by the United States to interfere with the ability of communist country citizens to emigrate, such as:

prohibitively high taxes specifically applied to the act of emigration with no relation on an individual's ability to pay or disguised as "education taxes" seeking to recoup the state's expenses in educating those who are seeking to permanently depart;

punitive actions, intimidation or reprisals by the State against those seeking to emigrate (e.g., firing a person from his or her job merely for applying for an exit visa);

unreasonable impediments, such as requiring adult applicants for emigration visas to obtain permission from their parents or adult relatives;

unreasonable prohibitions of emigration based on claims that the individual possesses knowledge about state secrets or national security; and

unreasonable delays in processing applications for emigration permits or visas, interference with travel or communications necessary to complete applications, withholding of necessary documentation, or processing applications in a discriminatory manner such as to target identifiable individuals or groups for persecution (e.g., political dissidents, members of religious or racial groups, etc.).

Examples of these practices in the context of the former Soviet Union are described in an exchange of letters between Secretary of State Kissinger and Senator Jackson of October 18, 1974, discussing freedom of emigration from the Soviet Union and Senator Jackson's proposed amendment to the Trade Act, now known as the Jackson-Vanik amendment. (Reprinted in 1974 U.S.C.C.A.N. 7335–38.)

As explained in the accompanying memorandum, Section 201 does not deny anyone the right or ability to emigrate, and does not impose a tax on any decision to emigrate. Neither does the proposed tax raise questions of disparate standards applicable to the United States as against the nonmarket economics subject to Jackson-Vanik restrictions.

The emigration practices of those countries which have been the target of Jackson-Vanik restrictions have typically involved individuals or groups that have been persecuted by the State (e.g., dissidents), precluded family reunification, applied across the board to all citizens by a totalitarian State in order to preclude massive exodus, or have otherwise been so restrictive as to effectively prevent the exercise of the international right to leave any country including one's own (as recognized in Article 12(2) of the International Covenant on Civil and Political Rights and further described in the accompanying memorandum). Furthermore, the primary objectives of those seeking to emigrate from those countries have been to avoid further persecution or to be reunified with their relatives, and to leave permanently. It was the act of leaving for any period of time that the State sought to block. None of these conditions are comparable to the exercise of taxing authority by the United States under Section 201 or to the status of the individuals who would be subject to that tax.

As stated in the accompanying memorandum, Section 201 would not interfere with the right of an individual to physically depart from the United States, whether temporarily or permanently.

DEPARTMENT OF THE TREASURY,
Washington, DC. May 12, 1995.

KENNETH J. KIES, Esq.,
Chief of Staff, Joint Committee on Taxation,
Congress of the United States, Washington, DC

DEAR KEN: I am writing to respond to your letter of May 5, 1995, to Commissioner Richardson and myself requesting additional information regarding the President's proposal to impose a tax on certain U.S. citizens and residents who expatriate. I understand that Commissioner Richardson will respond to the details of most of your questions. This letter responds to two issues you have raised: potential double taxation and interactions with our tax treaties.

I. THE PROPOSAL DOES NOT CREATE SERIOUS PROBLEMS OF DOUBLE TAXATION

A. The Proposal Is Unlikely to Cause Actual Double Taxation

In reviewing the issue of whether the expatriation proposal might give rise to double taxation with the expatriating taxpayer subsequently disposes of his assets, we believe that this risk of double taxation is highly unlikely and can reasonably be viewed as a theoretical issue. First, in order for double taxation to occur, the expatriating taxpayer must move to a country which imposes a significant tax on his income. It appears that individuals who relinquish U.S. citizenship with substantial accrued gains rarely take up residence in a country that would impose significant taxes on those gains. In our review of this area, we have not identified any case in which a wealthy expatriate now pays substantial foreign taxes. This may explain the lack of U.S. competent authority experience under section 877. In addition, we have been informally told by Canadian tax officials that Canada has not had any significant competent authority experience with its departure tax that has been in effect since 1972.

Second, if in the rare case, the expatriating taxpayer moves to a high tax jurisdiction and is subject to a high effective tax rate, that taxpayer is highly likely to engage in tax planning that in many cases will result in a step-up in basis for purposes of the foreign country's tax law. Tax advisors can be expected to propose a range of techniques to avoid potential double taxation. For example, we expect that advisors would suggest transfers to controlled entities (such as corporations, partnerships or trusts), as well as sales and repurchase transactions before the expatriate arrives at his new country of residence. We understand that these types of self-help transactions are common today when persons move from a country that has a residence-based tax system to another country (including the United States).

In addition, if the individual moves to a jurisdiction which has in effect a tax treaty with the United States, double taxation may be reduced or eliminated either under substantive provisions or the mutual agreement provisions of the tax treaty. Commissioner Richardson's letter addresses these possibilities.

Finally, the individual may avoid double taxation under S. 700 if he elects to continue to be treated as a citizen until disposing of an asset that would otherwise be subject to U.S. tax on expatriation. Any U.S. tax on foreign source gains may be offset by foreign income taxes paid on the disposition.

B. Policies for Determining Whether the United States Should Forego Tax to Avoid Double Taxation

Double taxation occurs when two countries tax the same income without granting a foreign tax credit or otherwise resolving the question of primary right to tax. The United States taxes U.S. citizens and residents on worldwide income and grants a credit for foreign taxes paid on foreign source income. Thus, we assert jurisdiction to tax all income of U.S. citizens and primary jurisdiction to tax U.S. source income. These rules may conflict with foreign country rules. Countries may determine jurisdiction to tax differently. For example, there may be different rule defining residence of individuals, and certain individuals may, therefore, be resident in two jurisdictions. Source rules may differ and two countries both may assert the primary right to tax the same income. Also, certain foreign countries source services income in the place where the services are used, rather than where the services are performed. For example, if an architect, draws blueprints in the United States for a building constructed in another country, both countries may assert primary taxing jurisdiction over the income from those services. In these cases double taxation may occur. These inconsistencies are the inevitable result of sovereign countries determining the scope of their taxing authority.

Thus, in determining whether U.S. law causes double taxation that ought to be relieved unilaterally, the United States generally tests whether a provision causes double taxation by assuming that a foreign country has a tax system that mirrors the U.S. system. The United States unilaterally relieves double taxation on net foreign source income because not to do so would case double taxation in the "mirror" case. However, it would be inconsistent with the legitimate exercise of our jurisdiction not to tax income generated in the United States to relieve double taxation in the case of inconsistent treatment of services described above. We should not simply cede our taxing right in such a case. Treaties are the appropriate mechanism to resolve double taxation arising when jurisdictions disagree over which country has the primary right to tax.

The expatriation proposal is such a case where the United States should not cede its taxing right. In computing the tax on expatriation, the Administration's proposal provided most incoming residents with a fair market value basis in their property when they entered the United States. S. 700 provides that all individuals who enter the United States received a fair market value basis in property at the time they enter the United States for all dispositions—not just in computing the tax on expatriation. Thus, the United States would tax only the gains accrued while citizens or long-term residents were subject to U.S. taxing jurisdiction. If other countries mirrored the U.S. rules there would be no double taxation and, therefore, the U.S. should not cede its taxing jurisdiction unilaterally. Consequently, the potential double taxation (if any in fact were to occur) ought to be resolved by agreement between the countries.

C. Limited Circumstances in Which Double Taxation is Tolerable

The desire to avoid double taxation is but one consideration that is taken into account with other tax policy concerns. The Internal Revenue Code contains numerous provisions in which concerns about possible double taxation were outweighed by other factors. In particular, existing section 877 can cause double taxation. If an expatriate sells assets within ten years after he renounces U.S. citizenship, double taxation can occur. Both the United States and the new country of residence may tax the gains. A similar situation exists under section 7701(b)(10), which taxes certain aliens on gains while nonresidents of the United States if they return to the United States within three years of prior U.S. residence.

Congress has determined in other cases in which the risk of double taxation does not override tax policy objectives such as fairness. For example, double taxation may result from the application of section 864(c)(6) (taxing nonresidents on deferred payments attributable to U.S. activities), section 864(c)(7) (taxing the disposition of property that was used in a U.S. trade or business if the property is disposed of within ten years of the cessation of the trade or business), section 367(a) (taxing certain transfers of appreciated property to foreign corporations), and section 367(d) (taxing a U.S. person on deemed royalty payments as a result of transfers of intangible property to foreign corporations).

In sum, the problems of double taxation are more likely in theory than in practice. In addition, the expatriation proposal would not cause double taxation if other countries had similar laws. Finally, the potential for double taxation is only one tax policy issue to be taken into account in reviewing proposals, such as the expatriation proposal; other tax policy objectives, such as perceived and actual fairness, can outweigh a remote risk of double taxation.

II. THE PROPOSAL IS SUPERIOR TO EXISTING LAW WITH REGARD TO TAX TREATIES

A. Tax Treaties May Limit the Effectiveness of Existing Section 877

In *Crow v. Comm'r,* 85 T.C. 376 (1985), the Tax Court held that the prior tax treaty between the United States and Canada prevents the IRS from applying section 877 to an expatriate individual who resides in Canada. This treaty allowed the United States to continue to tax U.S. citizens, but did not explicitly give the United States the right to tax former citizens. Although the Canadian treaty has since been renegotiated, practitioners advise that other tax treaties may give an expatriate the opportunity to avoid section 877. *See, e.g.,* Ness, "Federal Tax Treatment of Expatriates Entitled to Treaty Protection," 21 Tax Lawyer 393 (1968); Association of the Bar of the City of New York, "Report on the Effect of Changes in the Type of United States Tax Jurisdiction over Individuals and Corporations," Tax Notes, Nov. 1, 1993 (1991); Langer, The Tax Exile, at 110–15 (1993–94) (citing treaties with Austria, Denmark, Greece, Ireland, Luxembourg, Pakistan, Sweden, and Switzerland). Therefore, the effectiveness of existing section 877 may be seriously hindered by certain tax treaties.

B. Tax Treaties Will Not Limit the Effectiveness of Proposed Section 877a

One of the benefits of the Administration proposal is that it does not conflict with our tax treaties. The proposal assesses tax while the individual is still a U.S. citizen. The United States would be able to impose this tax consistent with all of our treaties because all U.S. tax treaties reserve the right of the United States to tax its citizens as if the treaty had not come into effect.

The Administration proposal includes an amendment to the Code to ensure that there is no gap between when an individual terminates U.S. citizenship and when the tax on expatriation is imposed. *See* proposed section 7701(a)(47). It is possible that there could be a difference between the time that citizenship is terminated for tax purposes and the time that the Department of State considers citizenship terminated. This potential difference should not, however, give rise to tax treaty problems. Tax treaties will use domestic *tax* rules to determine when individuals terminate U.S. citizenship.

"United States Citizenship" is not defined in our treaties. Tax treaties contain a rule which determines how to define terms that are not otherwise defined in the treaty. The language on this point that appears in the 1981 U.S. proposed model tax convention also appears in most U.S. tax treaties:

> As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 25 (Mutual Agreement Procedure), have the meaning which it has under the laws of that State concerning the taxes to which the Convention applies.

Article 3(2). Under this language, undefined terms are defined by reference to domestic laws concerning the taxes to which the Convention applies.

The proposed tax treaty with France contains language rephrasing this concept to make it more explicit that the tax law definition prevails over other possible legal definitions. The draft of the Treasury Technical Explanation indicates that the rephrasing was requested by France, and that the United States had no objection because "this is consistent with the U.S. position regarding interpretation of this provision." In addition, the 1995 version of the OECD Model treaty will be revised to make this point more explicit. The new version of Article 3(2) will state:

> As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

The OECD Commentary will state that "paragraph 2 was amended in 1995 to conform its text more closely to the general and consistent understanding of Member states."

In other contexts, our tax treaties should not be interpreted to look to nontax definitions of an undefined term instead of tax definitions. For example, for tax treaty purposes the term "real property" must be defined under section 897 of the Code, and not by reference to state law. Similarly, for tax treaty purposes the term "dividends" is defined under Subchapter C of the Code, and not by reference to Security and Exchange Act or state corporate law definitions.

It is important to note that any difference between proposed section 7701(a)(47) and the Department of State interpretation of when citizenship is terminated is analogous to the difference that exists under current law regarding when an individual is deemed to have abandoned his status as a permanent resident for tax purposes as opposed to immigration law purposes. Under immigration law, a green card is only valid as long as an individual retains residence in the United States. Thus, if an individual permanently moves to another country, for immigration law purposes that individual is no longer a permanent resident of the United States. For tax purposes, however, the individual remains a U.S. permanent resident until that status is revoked or has been administratively or judicially determined to have been abandoned. Section 7701(b)(6)(B).

The legislative history to section 877A should indicate that the expatriation provision is not intended to conflict with tax treaties, but if any such conflict is asserted the new statute should prevail.

If there are other issues you would like us to address, or if you need additional information, please let me know.

Sincerely,

LESLIE B. SAMUELS,
Assistant Secretary (Tax Policy).

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Washington, DC, May 12, 1995.

KENNETH J. KIES, Esq.
Chief of Staff, Joint Committee on Taxation,
Congress of the United States, Washington, DC 20515

DEAR MR. KIES: This is in response to your letter of May 5, 1995, addressed to Assistant Secretary Samuels and me, in which you requested certain additional information regarding the legislative proposals that would impose a tax on U.S. citizens and certain long-term permanent residents who expatriate. As with my response, dated April 26, 1995, to your earlier letters, this letter will address your inquiries from the perspective of the Internal Revenue Service. As before, I will follow the general format of your letter.

Pursuant to section 6103(f)(2) and (f)(4)(A) of the Internal Revenue Code of 1986, this letter contains tax return information (which has been underlined). I emphasize again that some of the enclosed information contains sensitive data developed from taxpayer cases. Any disclosure of the information (even to the taxpayers involved) is subject to the limitations of section 6103 and could undermine the Government's position in these cases.

INFORMATION RELATED TO THE APRIL 4 AND APRIL 7 REQUESTS AND THE RESPONSES THERETO

1. Identification of trust interests.

In order to identify trust interest held by an expatriate, the IRS would rely on information obtained from relevant tax and information returns. Under the Administration's expatriation legislative proposal, an expatriate must file a tentative tax return within 90 days following the act of expatriation. It is contemplated that, on this return, the taxpayer would disclose the nature and value of his assets, including interest in any trust, in order to verify the calculation of the tax liability under section 877A. Also, the new and expanded reporting requirements for foreign trusts and their U.S. grantors and beneficiaries that are part of the Administration's foreign trust legislative initiative contained in H.R. 981 will, if enacted, significantly enhance the information available for identifying trust interest held by an expatriating U.S. citizen or resident.

In addition, existing tax and information returns from which information could be obtained for purposes of identifying and verifying and expatriate's trust interested would include Form 1040 (schedule E for income distributed from a trust), Form 1041 (for domestic non-grantor trusts) and Form 1040NR (for foreign non-grantor trusts), and any associated Schedules K–1 identifying beneficiaries (by name and taxpayer identifying number). Further sources of such information would include Forms 3520 and 3520A, required to be filed under section 6048 by U.S. persons creating or transferring property to foreign trusts, and TDF Form 90–22.1, required to be filed by U.S. persons with signature authority over or financial interests in foreign financial accounts.

As with the entire Federal income tax system, all the information sources described above rely principally on self-assessment and voluntary compliance by taxpayers of fiduciaries. However, the IRS possesses broad investigative powers to verify information provided by taxpayers as well as to detect omitted information and noncompliance. These powers include the authority to obtain taxpayer information from third party sources, such as banks and other third-party record keepers. Further, the IRS can obtain information from treaty partners through the exchange of information programs under tax treaties.

2. (————)

(————).

3. (————)

ADDITIONAL INFORMATION REQUESTED BY THE MAY 5 LETTER

(1)(a) Double taxation issues under section 877

Risks of potential double taxation arise each time a person or an asset moves across an international border. This systemic problem exists because of the lack of adequate coordination of tax regimes among different countries. Double taxation can result from *inter alia* discrepancies in rules governing the basis of assets for computing gain, loss, or depreciation, inconsistent source rules, or inconsistent residence determinations. Generally, tax treaties contain provisions designed to alleviate many of these double tax problems, either through substantive provisions or through the mutual agreement procedure.

U.S. citizens residing abroad are routinely exposed to double taxation because the United States taxes its nationals on a worldwide basis and their income is also subject to taxation by their foreign country of residence. Because of the foreign tax credit limitation rules of section 904, a residence country tax imposed on the U.S. source income of a U.S. citizen resident abroad is not creditable against his U.S. tax liability on such income, resulting in double taxation. However, many U.S. income tax treaties include special relief provisions to reduce these potential double tax problems. For example, a U.S. citizen residing in France and earning U.S. source consulting fees would be taxed on such income in the United States and, presumably, in France as well. Under U.S. domestic tax rules, the French tax would not be creditable against the U.S. tax; depending upon the French domestic rules governing the source of income and unilateral relief from double tax, the U.S. tax also might not reduce the French tax liability. However, under Article 23.3 of the U.S.-French income tax treaty, relating to Relief from Double Taxation, the U.S. has agreed to resource the income, and both countries have agreed to grant special cross-credits to ensure that the income is fairly taxed in each country while avoiding double taxation.

Not all U.S. income tax treaties contain provisions similar to those contained in Article 23.3 of the U.S.-French income tax treaty. Compare, for example, the French treaty provision with Article 23(3) of the U.S.-U.K. income tax treaty and Article 23.3 of the U.S.-German income tax treaty. While most U.S. income tax treaties contain some provisions that protect U.S. citizens residing in the treaty country from double taxation, the extent of available relief depends in each case upon the provisions of the applicable treaty. Note that these provisions, when present, are self-executing and generally do not require the intervention of the competent authorities.

A former U.S. citizen subject to tax on U.S. source income under section 877 is exposed to risks of double taxation similar to those of a U.S. citizen residing in a foreign country. Therefore, such a nonresident alien should generally be entitled to similar relief under income tax treaties to which a U.S. citizen is entitled. When an applicable tax treaty does not include adequate provisions relieving the double taxation of U.S. citizens residing in the treaty jurisdiction, taxpayers may consider seeking assistance from the competent authorities under the mutual agreement procedure of the treaty. The U.S. Competent Authority has had no cases requesting relief from double taxation resulting from the application of section 877 (or for that matter, section 7701(b)(10)).

The approach that the U.S. Competent Authority would take in determining if, and the extent to which, the U.S. should grant relief from double taxation resulting from the application of section 877 would be governed by a consideration of *iner alia*, the terms of the applicable treaty, the facts of the specific case, and the willingness of the foreign competent authority to cede part or all of its tax jurisdiction to the U.S.

However, as recent experience has shown, wealthy U.S. citizens who choose to expatriate typically either take up residence in low-tax countries or in high-tax countries which afford them special tax holidays. As a result, such individuals are unlikely to encounter double tax problems.

(1)(b) Double taxation resulting from another country's departure tax regime

Australia

The U.S. Competent Authority has no record of a case requesting relief from double taxation resulting from the application of Australia's departure tax. Although the Australian departure tax is substantially similar in its application to that of Canada, unlike the U.S.-Canada income tax treaty (see below), the U.S.-Australian income tax treaty does not include a specially designed mechanism to relieve the potential double tax that may result from the imposition of the departure tax with respect to appreciated assets on which gain has not yet been realized.

Canada

The U.S.-Canada income tax treaty contains two special provisions that enable a taxpayer to avoid double taxation resulting from Canada's departure tax. Under Article XIII(5), Canada preserves its right to impose a departure tax on the post-departure disposition of certain property owned by a former long-term resident of Canada. However, under Article XXIV(3)(b), the gain arising from such a disposition is sourced in the United States, and under Article XXIV(2)(c), Canada allows a deduction for the U.S. tax imposed on such gain. This mechanism is helpful when the taxpayer upon departure from Canada has elected to defer the imposition of the Canadian departure tax until actual disposition of the assets. Alternatively, Article XIII(7) permits a taxpayer to make an election to have a deemed realization event for U.S. tax purposes at the time the Canadian departure tax is paid. Therefore, any timing difference between when the Canadian and U.S. taxes would otherwise be due is eliminated, and the foreign tax credit rules operate in conjunction with the treaty to eliminate the double tax.

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(————).

Other countries

Some other countries, including Denmark, Finland, Norway, and Germany, have adopted tax laws pertaining to expatriation. We have no record of requests for competent authority assistance under the tax treaties with these countries arising from the application of these laws.

Creditability of foreign departure tax imposed prior to a realization event

A foreign tax is a creditable tax for purposes of section 901 of the Code if it qualifies as an income tax (or a tax in lieu of an income tax under section 903). Many conditions must be met in order for a foreign tax to be considered a creditable tax; in particular, a foreign tax that is imposed before the income is realized may not qualify as an income tax for purposes of section 901 unless it meets the pre-realization event requirements of Treas. Reg. § 1.901–2(b)(2)(i)(C). To the best of our knowledge, it appears that the Australian and Canadian departure taxes would satisfy these requirements because they are imposed on the appreciation of the value in property, and provide the taxpayer with a stepped-up basis in such property to reflect the tax paid.

Oil-rig drillers

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The Competent Authority agreement provides, in substance, that if a taxpayer elects the benefits of the agreement, then a balancing charge will not be imposed when an oil-rig is removed from Canada. The agreement further provides that the regulation requiring property to be located in Canada at year-end to qualify for a depreciation deduction is not applicable in determining the Canadian tax of a U.S. resident operating an oil-rig as a Canadian permanent establishment.

(1)(c) Double taxation relief—Proposed section 877A

Assistance from U.S. competent authority

If an expatriating U.S. citizen or long-term resident is immediately taxable on certain unrealized appreciation of his assets, double taxation might arise if the assets are subsequently disposed of and the same amount of appreciation becomes subject to tax in the country of residence. If that country has an income tax treaty in force with the United States, assistance from the competent authorities may be available depending upon the terms of the treaty including the mutual agreement provisions.

Generally, the mutual agreement procedure Article in an income tax treaty requires that a taxpayer apply to the competent authority of the country of residence. It is likely that a taxpayer who has expatriated from the United States would not be considered a U.S. person for purposes of the treaty unless that taxpayer had elected to remain taxable as a U.S. citizen as provided for in S. 700. Without such an election, it would therefore be appropriate for such an individual to seek competent authority relief through the country of residence. The U.S. Competent Authority is not aware that this venue requirement has limited the ability of taxpayers to obtain relief from double taxation under current section 877.

The purpose of filing a protective claim pursuant to section 7.02, Rev. Proc. 91–23, 1991–1 C.B. 534, is to ensure that the U.S. statute of limitations remains open so that relief, when granted, is not statute barred. Generally, protective claims are filed when a taxpayer is subject to, or anticipates being subject to, a foreign tax, which may be in contravention of a treaty or may cause double taxation for which competent authority relief is available. The filing of a protective claim at the time the U.S. tax is paid would normally ensure that the U.S. statute remains open, provided the minimum requirements for a valid protective claim are satisfied. This would be an appropriate measure for a taxpayer to pursue if the applicable treaty does not waive procedural barriers for the initiation and implementation of a competent authority agreement. However, the filing of a protective claim is not related to the issue of which competent authority a taxpayer may apply to for relief from double taxation.

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Section 865(g)(2) and foreign tax credits

An expatriating U.S. citizen or long-term resident alien who did not have a tax home (as defined in section 911(d)(3)) in a foreign country would realize U.S. source gain under the general rule of section 865(a) on a deemed disposition of property under proposed section 877A. Under section 865(g)(2), if the U.S. citizen or resident alien did have a tax home in a foreign country at the time of expatriation, the deemed gain would be considered to be foreign source but only if a foreign income tax equal to at least 10 percent of the deemed gain were actually paid to a foreign country at that time. Although this is a novel issue, we have tentatively determined that the statute authorizes the Secretary to treat a subsequently paid foreign tax as satisfying the requirements of section 865(g)(2) in order to convert the source of the deemed gain retroactively.

In addition, because the foreign tax paid on a subsequent sale would be paid by a nonresident alien, the tax would not be allowed as a foreign tax credit unless the gain were effectively connected with a U.S. trade or business (or the taxpayer had elected to continue to be taxed as a U.S. citizen as provided for by S. 700). Further, under the legislative proposals, the gain deemed realized upon expatriation could not again be realized at the time of the actual disposition of the property, so there may be no gain that could be taken into account for purposes of the foreign tax credit mechanism. Therefore, it is unlikely that under current law, a U.S. foreign tax credit would be available in these circumstances.

(2) Identification of long-term residents

We understand that the Immigration and Naturalization Service ("INS") operates computer databases that contain records of lawful permanent residents whose status has been revoked or has been administratively or judicially determined to have been abandoned. Data from these systems is currently shared with other government agencies (*e.g.*, the Selective Service and Customs). It is our preliminary understanding that no statutory change would be necessary for the INS to begin sharing information from these systems with the IRS.

SPECIFIC INFORMATION REQUESTS

(3)(a) Form 1040 statistics

On Exhibit B attached to this letter, I have provided statistical information regarding the number of individual income tax returns filed by overseas taxpayers during the ten year period 1984–93. This information is taken from the Commissioner's Annual Reports for the period and reflects all returns filed on the 1040 series, including Forms 1040, 1040A, 1040EZ, 1040NR, 1040PR–SS and 1040C. Form 1040NR returns filed during the period have been separately broken out.

Individual income tax returns filed by U.S. citizens residing abroad are selected for examination according to the same criteria as returns filed by U.S. resident taxpayers. Thus, similar classification and screening processes are employed by examination personnel specifically trained on international issues. Exhibit C to this letter shows the number of examinations completed by the Office of Assistant Commissioner (International) ("ACI") for fiscal years 1992–1994. While ACI has primary jurisdiction for overseas taxpayers, other examinations of U.S. citizens and residents abroad and of nonresident aliens are conducted by district offices but have not been included with the information shown on the exhibit. The IRS' information systems do not accumulate nationwide examination results based on filing addresses or residency status.

The audit coverage rate for all individual taxpayers residing overseas, including nonresident aliens, is also shown on Exhibit C for fiscal years 1992–1994. The coverage rate for all Form 1040 series examinations is separately shown along with the coverage rate for Form 1040NR examinations. Please note that these examination coverage rates are based only on examinations conducted by ACI.

Pursuant to section 6039E, added to the Code by the Tax Reform Act of 1986, applicants for U.S. passports are required to provide certain information to the IRS. The information (applicant's name, mailing address, date of birth and Social Security Number) is collected from taxpayers by the Department of State ("DOS"), which submits the information to the IRS quarterly via magnetic media. Approximately 3–5 million records are received annually under this program (as the first 10 year passports expire, DOS expects the volume to double), with the vast majority of them pertaining to taxpayers with domestic addresses.

The IRS processes the passport records through the Information Returns Program ("IRP") to validate the Social Security Number for subsequent use in the various IRP-based compliance programs. Potential passport civil penalties ($500 for failure to supply a correct Social Security Number) are also identified at this time and are subject to additional special processing. While processing problems at both the IRS and the DOS have limited the number of passport civil penalties assessed to date, we are currently in the final stages of testing the first phase of a significant change to our process which will result in approximately 1,300 passport penalties being assessed in connection with tax year 1992. This number should increase as we complete the entire cycle and further refine the process. After we complete the current testing phase, we plan to thoroughly analyze the effectiveness of the passport civil penalty to determine the overall effectiveness of the program.

(3)(b) Departure certificates ("sailing permits")

Generally, nonresident aliens departing the United States should obtain a certificate of compliance from the IRS District Director on a Form 2063, U.S. Departing Alien Income Tax Statement, or Form 1040C, U.S. Departing Alien Income Tax Return. Form 2063 is not included in the IRS automated processing system. Therefore, a meaningful estimate of how many certificates have been issued over the past ten years would require a manual count, a procedure that we did not undertake due to the time constraints in responding to your letter. We also do not have available data at this time on the number of Form 1040C filings. While the Forms 1040C are electronically processed, the data is combined with the Form 1040 return data. In its current state, that data does not identify the Forms 1040C separately. If needed, however, we can initiate a project based on our best filing data to obtain a count of the Forms 2063 and 1040C.

(3)(c) Taxpayer returns

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I sincerely hope that these responses to your further enquiries are helpful. I appreciate the growing shortness of time in which you are to complete your June 1 report to Congress and assure you that the follow-up information promised in this letter will be furnished to you with all possible haste. In the meantime, if you require further information, please contact me or Mike Danilack, of my staff, at (202) 622–5440.

Sincerely,

MARGARET MILNER-RICHARDSON.

EXHIBIT A

For Immediate Release

TREASURY NEWS,
DEPARTMENT OF THE TREASURY,
Washington, DC, February 17, 1984.

UNITED STATES AND CANADA ENTER INTO COMPETENT AUTHORITY AGREEMENT REGARDING CANADIAN TAXATION OF U.S. OFFSHORE DRILLING CONTRACTORS UNDER U.S.—CANADA INCOME TAX CONVENTION

The Treasury Department today announced the signing of an agreement between the Internal Revenue Service and Revenue Canada, the competent authorities for the United States and Canada, respectively, under the United States-Canada Income Tax Convention of March 4, 1942, as amended, regarding the taxation in Canada of income from U.S. drilling rigs engaged in offshore drilling operations. The Internal Revenue Service and Revenue Canada agreed to reaffirm the competent authority agreement upon the entry into force of the United States-Canada Income Tax Convention signed September 26, 1980, as amended by a Protocol signed June 14, 1983.

A limited number of copies of the competent authority agreement are available from the Treasury Public Affairs Office, Room 2315, Treasury Department, Washington, DC 20220, telephone (202) 566–2041.

Contact: Charles Powers

REVENUE CANADA TAXATION,
Ottawa, Ont., January 26, 1984.

Mr. P.E. COATES,
Associate Commissioner (Operations), Internal Revenue Service, Department of the Treasury, Washington, DC.

DEAR MR. COATES: With respect to the taxation in Canada of income in respect of drilling rigs owned by U.S. residents, it gives us pleasure to inform you that we agree that for the purposes of avoiding double taxation and resolving difficulties which arise for U.S. residents engaged in Canadian offshore drilling activities, the Competent Authorities of the Contracting States shall be guided by the following in the taxation by Canada in respect of an offshore drilling rig, that constitutes a permanent establishment of a U.S. resident within the meaning of Article 3(f) of the 1942 Protocol (the "Protocol") accompanying the Canada-United States Income Tax Convention of March 4, 1942, as amended (the "Convention") and that is in "Canada" within the meaning of paragraph 5 of the Protocol.

Upon the entry into force of the Canada-United States Income Tax Convention signed September 26, 1980, as amended by a Protocol signed June 14, 1983 (the "Proposed Convention"), the Competent Authorities agree to reaffirm the agreement described herein. For purposes of the Proposed Convention, the Agreement shall apply to an offshore drilling rig that constitutes a permanent establishment of a U.S. resident located in any area within the territorial seas of Canada, and any area beyond the territorial seas which, in accordance with international law and the laws of Canada, is an area within which Canada may exercise rights with respect to the seabed and subsoil and their natural resources.

1. For the purposes of this agreement:

(A) The term "drilling rig" includes, but is not limited to, all barge rigs, drillships, jackup rigs, semisubmersibles and tender assisted platform rigs (including any related equipment).

(B) The term "Canadian depreciation" in respect of a drilling rig that is a permanent establishment in Canada of a U.S. resident ("a Canadian permanent establishment"), or in respect of capital improvements thereto, means depreciation calculated with respect to the historical cost of the drilling rig or the capital improvements using the method described in paragraphs 2 and 4 of this agreement.

(C) The term "capital cost" in respect of a drilling rig or in respect of capital improvements thereto shall be the historical cost as defined herein of the drilling rig or the capital improvements.

(D) The term "historical cost" in respect of a drilling rig or in respect of capital improvements thereto means the amount of the aggregate of the actual amount of money paid or payable and the fair market value, at the time of acquisition, of any other property paid or payable for the drilling rig or the capital improvements, adjusted in the manner of and by amounts described in subsection 13(7.1) of the Canadian Income Tax Act ("CITA"). If the drilling rig or the capital improvements were acquired by the U.S. resident in a non-arm's length transaction, the historical cost of the drilling rig or the capital improvements shall be deemed to be the historical cost to the last person to have acquired the drilling rig or the capital improvements in an arm's length transaction.

(E) The term "undepreciated capital cost" in respect of a drilling rig or in respect of capital improvements thereto means the amount calculated in accordance with paragraph 13(21)(f) of the CITA by treating each drilling rig or capital improvement as if it were a separate class of property.

(F) For the purposes of paragraph (E), the expression "total depreciation" referred to in paragraph 13(21)(f) of the CITA, allowed in respect of a drilling rig or in respect of capital improvements thereto means the aggregate of the Canadian depreciation calculated in accordance with paragraph 4 herein and the Canadian depreciation claimed in accordance with paragraph—herein, from the date the drilling rig or capital improvements were initially placed in service. In no event shall the total depreciation allowed for periods in which a drilling rig constitutes a Canadian permanent establishment exceed the historical cost of the drilling rig or the capital improvements less the aggregate amounts of depreciation calculated in accordance with paragraph 4 herein.

(G) A drilling rig and any capital improvements thereto are considered placed in service when they are in a condition or state of readiness and availability for a specifically assigned function whether in a trade or business, in the production of income, in a tax exempt activity, or in a personal activity.

2. Where in a taxation year a drilling rig constitutes a Canadian permanent establishment of a U.S. resident, such U.S. resident may elect to claim Canadian depreciation on such drilling rig or any capital improvements thereto for the taxation year in accordance with the terms of this agreement by filing a statement pursuant to paragraph 3 herein. Where such election is made by the U.S. resident, such U.S. resident shall claim an amount of Canadian depreciation that does not exceed 15 percent, and is not less than 6⅔ percent, of the historical cost of the drilling rig or the capital improvements. If the drilling rig does not qualify as a Canadian permanent establishment during the entire taxation year, Canadian depreciation claimed for that year shall be prorated, based upon the number of days during such year that the drilling rig constitutes a Canadian permanent establishment. The amount allowed under this paragraph at any time may not exceed the undepreciated capital cost at that time.

3. For purposes of Canadian income taxation with respect to a drilling rig that is a Canadian permanent establishment of a U.S. resident, the U.S. resident may elect to claim Canadian depreciation on such rig under the rules described in paragraphs 2 through 6 herein by filing a statement to that effect with its Canadian income tax return for the first taxation year ending after the date this Agreement is executed in which the drilling rig is a Canadian permanent establishment of such resident. Any U.S. resident that had a drilling rig that constituted a Canadian permanent establishment on or before the date that this agreement is executed may elect to claim Canadian depreciation on that rig in accordance with the rules described in paragraphs 2 through 6 herein for all past taxation years for which the Department of National Revenue ("DNR") may still assess taxes pursuant to the CITA, by filing the above statement with DNR, where possible with its 1983 tax return, and in any event no later than July 31, 1984. Once a statement has been filed in respect of a drilling rig for a taxation year, the rules in this agreement shall apply for all subsequent taxation years in determining the amount of Canadian depreciation that may be claimed in respect of that drilling rig and any capital improvements thereto, regardless of whether the statement was filed by the U.S. resident or by a person (in this agreement referred to as a "related person") that was not dealing at arm's length with the U.S. resident when it acquired the drilling rig or the capital improvements.

Once a statement has been filed by a U.S. resident in respect of a drilling rig, the rules described in paragraphs 2 through 6 herein shall apply to the drilling rig and any capital improvements thereto if the drilling rig is reintroduced into Canada by the U.S. resident or by a related person after having been previously removed from Canada. If the U.S. resident did not previously recover the undepreciated capital cost of the drilling rig or the capital improvements through the deduction of Canadian depreciation or if capital improvements have been subsequently made thereto, the U.S. resident or related person shall be entitled to claim as Canadian depreciation the remaining undepreciated capital cost in accordance with the rules described in paragraphs 2 through 6 of this Agreement.

4. Where, at any time, in a taxation year a drilling rig owned by a U.S. resident or by a related person has been placed in service and does not constitute a Canadian permanent establishment of the U.S. resident, Canadian depreciation shall be calculated in respect thereof and in respect of capital improvements thereto using the

straight line method over a period of 15 years (6⅔ percent of the historical cost per year) for such periods during which the drilling rig does not constitute a Canadian permanent establishment (including any period during which the drilling rig is leased in bareboat form by the U.S. resident to another person for use in Canada.) Depreciation determined pursuant to such calculation shall be prorated based on the number of days during the taxation year that the drilling rig did not constitute a Canadian permanent establishment.

5. If a U.S. resident elects to claim Canadian depreciation with respect to a drilling rig under the rules described in paragraphs 2 and 4 herein, the amount deductible by him pursuant to paragraph 20(1)(a) of the CITA shall be the Canadian depreciation permitted pursuant to paragraphs 2 and 4 herein. To the extent that it is inconsistent with this agreement, Part XI of the regulations shall not apply with respect to that drilling rig and any capital improvements thereto. Furthermore, for Canadian Income Tax purposes, the U.S. resident who has so elected shall not realize any recaptured depreciation, capital gain or terminal loss with respect to the removal of the drilling rig from Canada or its disposition in Canada. In addition, a U.S. resident who realizes a terminal loss on a drilling rig for which a statement has not been filed pursuant to paragraph 3 herein will not be permitted to deduct that loss against Canadian taxable income derived by that U.S. resident from any other drilling rig for which a statement has been filed pursuant to paragraph 3 herein.

6. Except as otherwise specifically provided herein, nothing shall restrict the right of any U.S. resident to a credit, deduction or exclusion provided under the CITA. For example, nothing in this agreement shall prevent a U.S. resident of a related person from carrying back or forward to other taxation years under section 111 of the CITA, any non-capital losses (other than terminal losses) from a drilling rig for which a statement has been filed pursuant to paragraph 3 herein in computing the taxable income for such other years.

7. If a U.S. resident does not elect to claim Canadian depreciation with respect to a drilling rig and any capital improvements thereto under the rules described above, paragraphs 2 through 6 of this agreement shall not apply with respect to the taxation by Canada of the U.S. resident in respect of that drilling rig or those capital improvements.

8. Reasonable fees and expenses related thereto for mobilization, de-mobilization, or standby for a drilling rig in respect of the number of days the drilling rig spent outside Canada during the mobilization, de-mobilization, or standby period, as the case may be, are not attributable to a permanent establishment in Canada.

9. Reasonable fees paid for work and expenses related thereto (herein referred to as "preparatory work") performed outside Canada in connection with preparing a drilling rig for operations in Canada are not attributable to a permanent establishment in Canada.

10. For greater certainty, reasonable fees and expenses for mobilization, de-mobilization, standby, or preparatory work will be defined in due course by the Competent Authorities of both countries.

Would you please sign in the space provided below if you are in accord with the rules and procedures outlined in the foregoing paragraphs and agree that such rules and procedures shall guide both Competent Authorities in resolving the double taxation and other difficulties outlined in the opening paragraphs of this letter.

Yours sincerely,

J.R. ROBERTSON,
Director-General,
Audit Directorate.

EXHIBIT B

INDIVIDUAL INCOME TAX RETURNS FILED—INTERNATIONAL JURISDICTION INTERNAL REVENUE SERVICE COMMISSIONER'S ANNUAL REPORT

[Includes Forms 1040, 1040A, 1040EZ, 1040NR, 1040SS–PR, 1040C]

	Puerto Rico	Other–1040 Series	Total
1993	123,139	957,878	1,081,017
1992	117,274	915,769	1,033,043
1991	107,398	954,679	1,062,077
1990	99,781	978,058	1,077,839
1989	98,807	494,289	593,096
1988	94,135	431,205	525,340
1987	94,024	434,408	528,432

INDIVIDUAL INCOME TAX RETURNS FILED—INTERNATIONAL JURISDICTION INTERNAL REVENUE SERVICE COMMISSIONER'S ANNUAL REPORT—Continued

[Includes Forms 1040, 1040A, 1040EZ, 1040NR, 1040SS–PR, 1040C]

	Puerto Rico	Other–1040 Series	Total
1986	96,406	465,763	562,169
1985	80,520	354,229	434,749
1984	83,477	313,129	396,606

Form 1040NR filed Internal Revenue Service

1993	299,668
1992	265,445
1991	249,870
1990	240,368
1989	212,143
1988	180,350
1987	163,379
1986	153,512
1985	129,928
1984	109,419

Source: Research division.

EXHIBIT C

ASSISTANT COMMISSIONER (INTERNATIONAL) EXAMINATION COVERAGE—ACI ONLY

Please note that the coverage rate information is based only on audits conducted by the Office of the Assistant Commissioner (International) (ACI) who has primary examination jurisdiction of overseas filers. Examinations of individual return types are also audited by the other IRS district offices. The IRS information systems do not capture nationwide examination data separately for overseas filers, thus it must be accumulated on an independent basis. This data does not include service center audit activity.

	Audits	Returns filed	Coverage rate (percent)
ACI—All Individual Returns			
FY 1994	2,317	957,878 (FY93)	0.24
FY 1993	3,039	915,759 (FY92)	.33
FY 1992	5,545	954,679 (FY91)	.58
ACI—Form 1040 Series Only			
FY 1994	2,205	640,587 (FY93)	0.34
FY 1993	2,916	616,101 (FY92)	.47
FY 1992	5,291	689,234 (FY91)	.77
ACI—Form 1040NR Only			
FY 1994	112	299,668 (FY93)	0.04
FY 1993	123	265,445 (FY92)	.05
FY 1992	254	249,870 (FY91)	.10

Nationwide Examination Coverage—Individual Returns

	Percent
FY 1993	.92
FY 1992	.91
FY 1991	1.00

Source: Commissioner's Annual Report.

UNITED STATES DEPARTMENT OF STATE,
Washington, DC, May 17, 1995.

The Hon. BILL ARCHER,
Chairman, Joint Committee on Taxation,
House of Representatives

DEAR MR. CHAIRMAN: In my letter to you of May 9, I stated that the Department would provide additional information in response to your letter of April 25 and the May 1 meeting with the staff of the Joint Committee on Taxation. That information is enclosed.

Specifically, you asked that we review the "Forbes 400" list and provide the Joint Committee with a list of the names of individuals with substantially similar names who were issued Certificates of Loss of nationality during the period 1985–1994. Such a list may be found at TAB 1. We reiterate, as stated in our May 9 letter, that we lacked sufficient information to conduct a proper search when presented with only a family surname. Furthermore, absent a date and place of birth, we are not able to confirm that any of the "Forbes 400" individuals were issued Certificates of Loss of Nationality.

Also, you will find at TAB 2 the computer-generated list of persons who relinquished U.S. citizenship and were issued Certificates of Loss of Nationality between January 1, 1994 and April 26, 1995. You will note that in every instance the list includes the date when the Certificate of Loss of Nationality was issued, as well as the "loss date," i.e., the date upon which the statutory act was performed. In addition, we have included in the far right column, whenever available, the date upon which an individual naturalized abroad signed a statement of voluntary relinquishment of U.S. citizenship. As mentioned in my May 9 letter, there proved to be a number of cases which we were not able to retrieve and, thus, we lack the date of signature of the statement of voluntary relinquishment in those few cases.

I hope this reply addresses your concerns. Should you or your staff have additional questions, please contact Mr. Ed Betancourt in the Bureau of Consular Affairs at (202) 647–3666.

Sincerely,

WENDY R. SHERMAN,
Assistant Secretary, Legislative Affairs.

Attachments: As stated.

ATTACHMENTS

TAB 1

Individuals from "Forbes 400" List whose names are substantially similar to those of persons who were issued certificates of loss of nationality during the period 1985–1994:

Ted Arison,
Robert Dart,
John Dorrance,
Anthony Pilaro.

TAB 2

[See Appendix H herein for list.]

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Washington, DC, May 23, 1995.

KENNETH J. KIES, Esq.,
Chief of Staff, Joint Committee on Taxation,
Congress of the United States, Washington, DC.

DEAR MR. KIES: This is in response to your letter of May 16, 1995, addressed to Assistant Secretary Samuels and me, in which you requested certain additional information pertaining to the current legislative proposals that would impose a tax on U.S. citizens and residents who expatriate. This letter also responds to two questions regarding the exhibits to my letter of May 12, 1995, which were raised by your staff in telephone calls subsequent to your letter of May 16. As with both of my previous letters on this topic, this letter will address your inquiries from the perspective of the Internal Revenue Service.

RESPONSES TO MAY 16 REQUEST

1. Refund of expatriate's tax

We are not aware of any case in which a former U.S. citizen filed for a refund of taxes paid between the time he performed an expatriating act under the Immigration and Nationality Act and the time he received a certificate of loss of nationality from the U.S. Department of State.

Our research has found one litigated case that bears on your question, although it is not directly on point. In *United States* v. *Rexach*, 558 F.2d 37 (1st Cir. 1976), *rev'g*, 411 F. Supp. 1288 (D.P.R. 1976), the Court of Appeals held that an individual who was involuntarily expatriated by the State Department was nonetheless taxable as a citizen of the United States following the performance of his expatriating act because the individual continued to use a U.S. passport. The Court of Appeals reached this result even though the certificate of loss of nationality eventually issued by the State Department was retroactive to the date of the performance of the expatriating act. In reaching its decision, the Court of Appeals reasoned that the—

> balance of the equities mandates that back income taxes be collectible for periods during which the involuntarily expatriated persons affirmatively exercise a specific right of citizenship. This is precisely the position taken by the Internal Revenue Service [in Rev. Rul. 70–506 and Rev. Rul. 75–357].

558 F.2d at 41.

As a general matter, when an individual files a Form 1040, we assume either that he is a U.S. citizen, who might reside anywhere, or an alien residing in the United States. If a Form 1040 filer were to file an amended return claiming a refund of tax on the basis that he was not, during the relevant tax periods, a U.S. citizen, we would initially seek to verify the taxpayer's citizenship status with the State Department. Under current tax law, a person's status as a citizen, including when such status is lost, is determined under relevant provisions of the Immigration and Nationality Act. Treas. Reg. sec. 1.1–1(c). If the State Department confirmed that the taxpayer had lost his citizenship prior to the tax periods at issue, under the *Rexach* decision, we would enquire whether the taxpayer had exercised a specific citizenship right, such as traveling on a U.S. passport, at any time after the date of expatriation.

We would next examine whether the taxpayer had resided in the United States during the periods for which a refund of tax was sought and, if not, whether the taxpayer was subject to U.S. tax on the income received in such periods under section 877 or the normal rules applicable to nonresident aliens.

If we concluded, following our examination, that the former U.S. citizen was indeed entitled to a refund of tax, we would issue the refund. However, in these circumstances a taxpapyer would obtain a refund only for tax years for which a refund claim could still be filed; under section 6511(a), the limitations period for such a claim normally is three years from the date of filing the original return or two years from the date the taxes are paid, if later.

2. Congressional/GAO Studies

The 1985 study by the General Accounting Office ("GAO") to which your letter refers was incorporated in the report of a Congressional hearing regarding the "Problem of Tax Return Nonfiling by Americans Living Abroad" held before a Subcommittee of the Commerce, Consumer and Monetary Affairs Committee on May 8, 1985. The IRS's testimony and associated reports on the GAO study are contained at pages 41–92 of the report. Subsequently, in May 1993, the GAO issued a Report to the Chairman, Committee on Finance, U.S. Senate, entitled "Tax Administration, IRS Activities to Increase Compliance of Overseas Taxpayers" (GAO/GGD–93–93). The IRS's comments on this second GAO report are contained at pages 22–24 of that report.

In addition to the various actions of the IRS mentioned in its response to the 1985 GAO study, the IRS has, during the ensuing decade, continued to address the overseas compliance issues identified by that study. Specifically, the IRS has implemented the following further actions:

(1) Publication 54, entitled "Tax Guide for U.S. Citizens and Resident Aliens Abroad," is now updated annually for use by U.S. citizens and residents living abroad;

(2) A simplified Form 2555–EZ was developed to assist taxpayers abroad claiming section 911 benefits;

(3) As part of the IRS's nonfiler initiative and Compliance 2000, the IRS announced that relief would be afforded to certain taxpayers who had not made a timely election of section 911 benefits. Subsequently, the regulations under section 911 were amended to permit a late election of the section 911 exclusion in certain cases;

(4) In connection with the IRS's nonfiler initiative, the IRS has increased the emphasis on nonfiling during "taxpayer service tours" in which taxpayer service personnel are sent to foreign embassies and consulates around the world to provide taxpayers with additional assistance capacity during tax filing season;

(5) The IRS has worked with the overseas practitioners' community in the *pro bono* efforts to aid taxpayers in filing delinquent returns. This is in addition to the extensive advertising the Service has done overseas to provide information to taxpayers on filing requirements.

(6) Tax forms, including those in the IRS's overseas filer package, have been put on CD Rom and the Internet to make them more readily available to overseas taxpayers; and

(7) A statement is now included in all passports that all U.S. citizens working and residing overseas are required to file a tax return and report their worldwide income.

We believe that our continued emphasis on individual tax compliance in the international arena, announced in a joint statement with the Treasury Department on December 17, 1993, and our ongoing initiatives, referred to above, have resulted in enhanced voluntary compliance.

3. Revenue estimates

The answers to these questions will be furnished by Assistant Secretary Samuels.

4. Other treaty relief

I wish to clarify that, in my May 12th letter, I did not refer to any specific treaty provisions that would provide relief from double taxation that might arise under section 877. Instead, I sought to make the general point that a nonresident alien could look to the provisions of an applicable treaty that might address such double taxation. We have not conducted a review of all of our income tax treaties for purposes of determining whether any of those treaties contain a specific provision that might be used to obtain relief from double taxation in a hypothetical case where section 877 applies. However, we note that most of these treaties include articles pertaining to relief from double taxation and to the mutual agreement procedure.

5. Competent authority determinations

In my May 12th letter, I sought to make the point that competent authority assistance might be available to alleviate double taxation that could arise under proposed section 877A. Again, as I stated then, whether such relief might be available would depend upon the specific terms of a treaty, including its mutual agreement provisions.

Furthermore, the U.S. Competent Authority has had no cases requesting relief from double taxation under section 877, nor any analogous cases. Without the opportunity to review the specific facts upon which a double taxation claim might be based, it is difficult to comment upon the factors the competent authority would consider, other than to note that, in general, the competent authority would review the applicable treaty provisions, Commentary to the OECD Draft Convention for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital, domestic legislation (including legislative history), the specific facts of the case, and the ability of the competent authorities to reach a mutual agreement.

While the IRS has not been requested to resolve a case resulting from the application of section 877, cases involving individual taxpayers have been successfully resolved under the mutual agreement provisions of our income tax treaties. In the last three fiscal years, 51 cases (FY92—7, FY93—21, FY94—23) involving individual taxpayers were resolved by the competent authority. These cases involved issues of residency, estate and gift taxes, and rate/income exemptions. These case closures are indicative of the competent authority's ability to successfully resolve tax disputes involving individuals under the mutual agreement provision. To further reinforce the success of the competent authority process, we have enclosed the competent authority statistics in Exhibit A.

ADDITIONAL INQUIRIES REGARDING MAY 12 EXHIBITS

Subsequent to your letter of May 16, members of your staff raised by telephone two questions regarding the information appearing on Exhibits B and C to my letter of May 12, 1995. I will set these questions, and the responses thereto, out below.

Exhibit B: Is there any significance to the increase of almost 500,000 "Other-1040 Series" returns filed in 1990 as opposed to 1989?

The increase in Form 1040 series tax returns within the administrative jurisdiction of the Office of Assistant Commissioner (International) ("ACI") between 1989 and 1990 was attributable solely to operational changes at the IRS in processing returns with "APO/FPO" addresses. These are returns filed by U.S. government personnel, including military personnel, stationed overseas. Prior to 1990, the returns were filed with many districts around the country. However, the filing of these overseas returns was centralized with ACI in 1990 and underwent individual master file processing changes to indicate the change of operational jurisdiction. These changes led directly to the significant increase reflected in Exhibit B to the May 12, 1995 letter.

Exhibit C: The "Returns Filed" column showing "All Individual Returns" filed in fiscal years 1991 through 1993 exceeded, for each such year, the totals of the returns shown as filed in the charts for "Form 1040 Series Only" and "Form 1040NR Only". What is the significance of the discrepancies?

There is no significance to the discrepancies, which were the result, in each case, of transposition errors. The totals shown for "All Individual Returns" should have equaled the totals shown for "Form 1040 Series Only" plus "Form 1040NR Only". A revised Exhibit C showing the correct numbers is attached to this letter.

I hope that these responses to your additional enquiries are helpful. I am advised that the follow-up information promised in my letter of May 12 will be available shortly, and we will furnish it to you immediately upon receipt. In the meantime, if you require further information, please contact me or Mike Danilack, of my staff, at (202) 622–5440.

Sincerely,

MARGARET MILNER RICHARDSON.

EXHIBIT A

INTERNAL REVENUE SERVICE ASSISTANT COMMISSIONER (INTERNATIONAL) COMPETENT AUTHORITY STATISTICS

Fiscal year	Cases received	Cases disposed	Year end inventory
1989	....	....	285
1990	82	116	251
1991	107	120	238
1992	110	107	241
1993	133	157	217
1994	227	99	345

INVENTORY—ALLOCATION CASES

Fiscal year	U.S. initiated		Foreign initiated		Year end inventory
	Received	Disposed	Received	Disposed	
1989					245
1990	33	68	21	23	208
1991	57	76	22	23	188
1992	45	51	27	30	179
1993	41	83	23	39	121
1994	73	37	38	18	177

INVENTORY—NON-ALLOCATION CASES

Fiscal year	U.S. initiated		Foreign initiated		Year end inventory
	Received	Disposed	Received	Disposed	
1989					40
1990	8	3	18	22	41
1991	2	2	22	18	45
1992	3	3	28	19	54
1993	12	6	36	23	73
1994	18	9	63	31	114

INVENTORY—ADVANCE PRICING AGREEMENTS COMPETENT AUTHORITY CASES ONLY

Fiscal year	Cases received	Cases disposed	Year end inventory
1989			0
1990	2	0	2
1991	4	1	5
1992	7	4	8
1993	19	4	23
1994	35	4	54

PROCESSING TIME—ALL CASES[1]

[AVERAGE DAYS]

Fiscal year	U.S initiated	Foreign initiated	Combined
1990	1,577	807	1,201
1991	1,211	859	1,092
1992	624	752	685
1993	611	602	607
1994	466	666	569

[1] Excluding APAs and suspense time.

PROCESSING TIME—ALLOCATION CASES

[AVERAGE DAYS]

Fiscal year	U.S initiated	Foreign initiated	Combined
1990	1,640	798	1,427
1991	1,230	942	1,163
1992	643	886	733
1993	615	743	656
1994	489	773	582

PROCESSING TIME—NON-ALLOCATION CASES

[Average days]

Fiscal year	U.S. initiated	Foreign initiated	Combined
1990	145	408	377

PROCESSING TIME—NON-ALLOCATION CASES—Continued

[Average days]

Fiscal year	U.S. initiated	Foreign initiated	Combined
1991	502	751	726
1992	312	541	510
1993	556	362	403
1994	370	604	551

COMPETENT AUTHORITY RELIEF—ALL CASES

[Percent]

	1991	1992	1993	1994
Full relief:				
Correlative adjustment	61.90	40.25	47.38	56.15
Adjustment withdrawn	36.32	52.93	41.60	34.80
Partial relief	.39	3.65	4.75	5.65
No relief	1.39	3.17	6.27	3.40

ASSISTANT COMMISSIONER (INTERNATIONAL) EXAMINATION COVERAGE—ACI ONLY
EXHIBIT C—REVISED

Please note that the coverage rate information is based only on audits conducted by the Office of the Assistant Commissioner (International) (ACI) who has primary examination jurisdiction of overseas filers. Examinations of individual return types are also audited by the other IRS district offices. The IRS information systems do not capture nationwide examination data separately for overseas filers, thus it must be accumulated on an independent basis. This data does not include service center audit activity.

ACI—ALL INDIVIDUAL RETURNS

Fiscal year	Audits	Returns filed	Coverage rate (Percent)
1994	2,317	[1] 957,878	.24
1993	3,039	[2] 915,769	.33
1992	5,545	[3] 954,679	.58

[1] Fiscal year 1993.
[2] Fiscal year 1992.
[3] Fiscal year 1991.

ACI—FORM 1040 SERIES ONLY

Fiscal year	Audits	Returns filed	Coverage rate (Percent)
1994	2,205	[1] 658,210	.33
1993	2,916	[2] 650,324	.45
1992	5,291	[3] 704,809	.75

[1] Fiscal year 1993.
[2] Fiscal year 1992.
[3] Fiscal year 1991.

ACI—FORM 1040 NR ONLY

Fiscal year	Audits	Returns filed	Coverage rate (Percent)
1994	112	[1] 299,668	.04
1993	123	[2] 265,445	.05
1992	254	[3] 249,870	.10

[1] Fiscal year 1993.
[2] Fiscal year 1992.
[3] Fiscal year 1991.

Nationwide examination coverage—Individual returns

Fiscal year:	*Percent*
1993	.92
1992	.91
1991	1.00

Source: Commissioner's Annual Report.

DEPARTMENT OF THE TREASURY,
Washington, DC, May 23, 1995.

KENNETH J. KIES, Esq
Chief of Staff, Joint Committee on Taxation,
Congress of the United States, Washington, DC.

DEAR KEN: I am writing to respond to your letter of May 16, 1995, to Commissioner Richardson and myself requesting additional information regarding the President's proposal to impose a tax on certain U.S. citizens who relinquish their citizenship and certain residents who abandon their status as permanent residents of the United States.

I. RENUNCIATION OF CITIZENSHIP UNDER CURRENT LAW

Under current law, an individual is deemed to lose U.S. citizenship for tax purposes at the time that the individual loses U.S. citizenship under the Immigration and Nationality Act. Treas. Reg. section 1.1–1(c). Thus, if the Department of State issues a certificate of loss of nationality to an individual that indicates citizenship was lost on the date of a prior expatriating act, that individual would not generally be treated as a U.S. citizen for tax purposes beginning at the time of the expatriating act. Rev. Rul. 92–109, 1992–2 C.B. 3. In theory, if such an individual had filed U.S. tax returns after the expatriating act but before the Department of State had issued a certificate of loss of nationality, and that tax return was based on the individual's assumption that he was a U.S. citizen, the individual could obtain a refund of overpaid taxes.

However, such a situation is apparently very unusual. In fact, we understand that the Internal Revenue Service has not been confronted with such a claim for refund. Perhaps the reason that this situation does not appear to arise in practice is that an individual's action is only considered an expatriating act if the individual intended to renounce U.S. citizenship at the time of the action. An important consideration in whether the individual in fact intended to renounce citizenship is the individual's subsequent conduct. Where an individual continues to act as a citizen after the alleged expatriating act, courts have held that the individual did not intend to renounce citizenship. *See, e.g., United States v. Matheson*, 532 F.2d 809 (2nd Cir. 1976) (estate required to pay U.S. estate taxes where oath of allegiance to Mexico did not show that she intended thereby to give up U.S. citizenship because her conduct was at odds with an alleged intention to expatriate; she continued to carry a U.S. passport and pay U.S. income taxes as a U.S. citizen). If an individual represents to the Internal Revenue Service that he is a U.S. citizen by filing a U.S. tax return as a citizen, filing that tax return would be evidence that the individual continued to consider himself a U.S. citizen and would be a factor in determining whether a prior action was taken with the intention of relinquishing U.S. citizenship.

The expatriation tax proposal would change the definition of when an individual is deemed to lose U.S. citizenship for tax purposes. Under the proposal, an individual is generally determined to have relinquished U.S. citizenship when he first swears to the Department of State that he intends to do so. We believe that it is appropriate to use that the date to determine when an individual loses U.S. citizenship for tax purposes. First, under current law there could be a long period of time between an expatriating act and the date that the individual contacts the U.S. government. During this time, the individual may effectively have an election to retroactively abandon his citizenship. For example, an individual may know that he will conclude a large transaction on a certain date. Before that date the individual could obtain a foreign nationality. If the individual earns a large amount of taxable income on the transaction, the individual can contact the Department of State and claim that he intended to abandon his U.S. citizenship when he obtained the other nationality. However, the individual may choose not to contact the Department of State until after the transaction is complete to allow him the ability to obtain protections of the U.S. government during the transaction. In this regard, it has recently been reported that some individuals intentionally use foreign naturalization to set a date on which they can lose U.S. citizenship without losing the benefits of citizenship until they contact the Department of State. *See, e.g.*, Mailman, "Expatriation and Senator Moynihan's Tax Proposal," New York Law Journal, April 24, 1995 ("taking another nationality by naturalization . . . may be preferable to renunciation. These acts may also delay putting Uncle Sam in the picture, considered an advantage by some. . .")

The second reason that we believe that the change in the proposal is justified is that we are concerned about the reliability of documents from certain governments. In some countries, individuals may be able to obtain naturalization documents which are backdated. If the expatriation tax proposal were enacted and the definition of loss of citizenship for tax purposes were retained as under current law, there could be a large incentive for taxpayers to obtain backdated documents from other countries.

Finally, it is important to note that under current law the tax definition of citizenship differs from the Department of State definition of citizenship. For example, where a statute that terminated an individual's status as a U.S. citizen is declared unconstitutional, the Department of State considers that individual's U.S. citizenship to be retroactively restored. For tax purposes, however, in certain circumstances the Internal Revenue Service will not attempt to collect taxes from those prior years. See Private Letter Ruling 7605250090A which dealt with the estate of a taxpayer whose U.S. citizenship was retroactively restored at the time of her death. This private ruling concludes that although the taxpayer was a citizen of the United States at the time of her death, for estate tax purposes "her United States citizenship will not be recognized. Therefore, her estate is not subject to the estate tax under section 2001." Similarly, in *United States v. Rexach*, 558 F.2d 37 (1st Cir. 1976), the court held that the United States could not collect taxes for years that an individual was told by the U.S. government that she was not a U.S. citizen, even though she was a U.S. citizen for purposes of the Immigration and Nationality Act. Therefore, in appropriate circumstances, the tax definition of citizenship does not follow the definition of citizenship for other purposes.

II. COMPLIANCE BY NONRESIDENT CITIZENS

You have asked about the General Accounting Office ("GAO") study which examined compliance rates by American taxpayers who live overseas. Commissioner Richardson's letter will address changes that were made to procedures used to collect tax from U.S. citizens living abroad following the GAO study. Although the GAO study demonstrates that overseas taxpayers apparently are less likely to file U.S. tax returns than domestic taxpayers, this does not necessarily mean that overseas taxpayers are less likely to pay U.S. taxes than domestic taxpayers. Many overseas taxpayers do not owe significant U.S. taxes because of the foreign earned income exclusion and/or foreign tax credits. In fact, the little data that is available suggests that nonfiling overseas taxpayers owe little U.S. tax. In 1993 the GAO found that "in three studies where IRS successfully identified a number of nonfilers living overseas, enforcement actions taken against them did not result in significant additional revenue." General Accounting Office, "IRS Activities to Increase Compliance of Overseas Taxpayers," 9 (1993). In three studies identifying nearly 400 nonfilng taxpayers, only a dozen taxpayers were determined to have tax liabilities, totaling less than $20,000. *Id.* (The GAO states that this data is too limited to be able to predict the potential revenue impact of undertaking enforcement actions against overseas taxpayers. *Id.*)

Although some individuals may try to evade the proposed statute by hiding their assets, we believe that most individuals who would be subject to the proposed tax would not wish to commit a tax crime. If these individuals were willing to commit a crime, they could hide their assets in a foreign bank account and retain their U.S. citizenship. However, individuals who renounce their citizenship for tax purposes are trying to avoid tax within the established rules.

III. REVENUE ESTIMATE

Due to its confidential nature, our response to your third question is contained in a separate letter from Eric Toder, Deputy Assistant Secretary (Tax Analysis).

IV. ALLEVIATION OF DOUBLE TAXATION

You also ask several questions about resolving cases of double taxation under current expatriation rules and under proposed expatriation rules. As stated in our May 12 letter, we believe that the problems of double taxation are more likely in theory than in practice. We understand that the IRS has not encountered any actual case of double taxation under the expatriation rules that have been in effect since 1966. In addition, the proposed expatriation rules should not be considered to create double taxation because those rules would not cause double tax if other countries had similar rules. Finally, the potential for double taxation is only one tax policy issue to be taken into account in reviewing tax proposals. In the case of the expatriation proposal, other tax policy objectives, such as perceived and actual fairness, outweigh a remote risk of double taxation.

With respect to double taxation under current law, Commissioner Richardson's May 12 letter stated that if there were cases of double taxation under current expatriation rules, many tax treaty provisions would operate to mitigate double taxation without resort to the competent authority. For example, tax treaties contain an article on relief from double taxation which do not require the use of the mutual agreement procedure.

With respect to double taxation under the proposed expatriation provision, it is difficult to state the position that the competent authority would take in negotiations with other countries to interpret proposals that have not yet been enacted. The competent authority would consult the statute and associated legislative history to determine legislative intent on issues of overlapping tax jurisdiction. Treasury does not intend the proposed expatriation provision to cause inappropriate double taxation and is confident that the competent authority will be able to resolve any taxpayer disputes that may arise as a result of the proposal.

* * * * * * *

If there are other issues you would like us to address, or if you need additional information, please let me know.

Sincerely,

LESLIE B. SAMUELS,
Assistant Secretary (Tax Policy).

DEPARTMENT OF THE TREASURY,
Washington, DC, May 23, 1995.

KENNETH J. KIES,
Chief of Staff, Joint Committee on Taxation,
Congress of the United States, Washington, D.C. 20515

DEAR KEN:

I am writing to respond to the third question of your letter of May 16, 1995 to Commissioner Richardson and Assistant Secretary Samuels requesting information regarding the President's proposal to impose a tax on certain U.S. citizens and residents who expatriate. Pursuant to section 6103(f)(2) and (f)(4)(A) of the Internal Revenue Code of 1986, you are advised that the enclosure contains tax return information. Any disclosure of the information is subject to the limitations of section 6103.

Enclosed is a list of individuals who expatriated in recent years and whom we were able to identify and match against our Individual Income Tax Return File. Treasury compiled information on expatriating individuals from news media accounts and from lists given to us by the Department of State of individuals who renounced citizenship in 1993 and most of 1994. We are suppling you with the name, social security number, year of birth, and income tax liabilities for these expatriates. We cannot confirm based on our research methodology that we have identified all wealthy individuals who recently expatriated, even in 1993.

Our revenue estimate for the expatriation proposal reflects expected additional revenue from both income and estate taxes.

Sincerely,

ERIC TODER,
Deputy Assistant Secretary (Tax Analysis).

Enclosure [Not printed].

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Washington, DC, May 26, 1995.

KENNETH J. KIES, Esq.
Chief of Staff, Joint Committee on Taxation,
Congress of the United States, Washington, DC, 20515–6453

DEAR MR. KIES: This letter is intended to supplement my April 26, 1995, response to your letters of April 4 and 7, 1995, regarding the current legislative proposals that would impose a tax on U.S. citizens and residents who expatriate. Specifically, question 2 of your April 4 letter requested that we identify pending taxpayer controversies involving section 877, and question 4 of your April 7 letter asked that we provide you with information regarding wealthy taxpayers who have recently expatriated.

Previously, in my April 26 letter, we provided you with information regarding specific cases of which we were aware, and upon which we based our analysis of the proposal prior to its announcement by the President. In order to provide your Committee with as much information as possible, however, we conducted a broad survey of all our examiners requesting that they advise us of any cases involving issues under sections 877, 7701(b)(10), 2107 or 2501(a)(3). We also asked that they notify us if they knew of any taxpayers with significant assets who had recently expatriated. The further responses we received from the field pursuant to these requests are summarized below.

Please note that many of these cases are currently being developed by agents in the field, and the summaries set forth below reflect the facts to the best of the agents' knowledge at this date. Some of these examinations are the result of the taxpayer being identified as a nonfiler. If an agent assigned to the nonfiler's case subsequently learns that the taxpayer has a foreign address, the agent may consider section 877 as a possible issue until citizenship status can be confirmed. Normally, the agent first contacts the taxpayer to ask about citizenship status. Because of the urgency of your inquiries, however, the National Office contacted the State Department regarding the taxpayers identified to us by the field. The State Department advised us that they have no record of some of these taxpayers having formally renounced their U.S. citizenship. They further cautioned us, however, that this does not mean that these taxpayers have not performed an expatriating act that may be the basis of a future claim of expatriation.

I am also enclosing with this letter a copy of the individual income tax return you requested in question 3.a. of your letter of May 5, 1995, as well as copies of several of the additional individual income tax returns promised in my response of May 12, 1995. I will forward to you any additional returns as soon as they are received from the service centers.

Pursuant to section 6103(f)(2) and (f)(4)(A) of the Internal Revenue Code of 1986, this letter contains tax return information (which has been underlined). I emphasize again that some of the enclosed information contains sensitive data developed from cases in examination, appeals or litigation. Any disclosure of the information (even to the taxpayers involved) is subject to the limitations of section 6103 and could undermine the Government's position in these cases.

APRIL 4, 1995 LETTER
QUESTION 2: SECTION 877 CONTROVERSIES

[Not printed.]

APRIL 7, 1995 LETTER
QUESTION 4: RECENT WEALTHY EXPATRIATES

[Not printed.]

* * * * *

I hope that the further taxpayer information contained in this letter is helpful to you in preparing your June 1 report to Congress. If you have any additional requests or require further information, please contact me or Mike Danilack, of my staff, at (202) 622–5440.

Sincerely,

MARGARET MILNER RICHARDSON.

Attachments: [Not printed].

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, DC, May 31, 1995.

The Honorable BILL ARCHER,
Chairman, Joint Committee on Taxation,
Congress of the United States, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter requesting information regarding the ability of individuals to move into and out of the United States. The following information addresses your preliminary list of issues. In addition, I have enclosed several Immigration and Naturalization Service (INS) publications for further reference.

1. Description of visas available to aliens for entry into the United States

In general, there are two types of visas issued to aliens for entry into the United States. The first is an immigrant visa. This allows the alien to enter the United States with the intention of remaining permanently. These aliens are issued alien registration receipt cards (commonly know as "green cards") and are called "Permanent Residents." Permanent Resident aliens come into contact with the INS at each entry into the United States and are questioned as to their residency in the United States. Permanent Residents are allowed to remain outside the United States for periods not to exceed 12 months. They are, however, allowed to remain outside the United States for up to 2 years if they have obtained a Re-entry Permit prior to departure from the United States.

The second type of visa is a nonimmigrant visa. In order to obtain a nonimmigrant visa, the alien must appear at a United States Consulate or Embassy abroad. Nonimmigrant visas are for various purposes. Most are issued for the purpose of travel for pleasure or business. Some are issued to permit the alien to reside and work temporarily in the United States.

Other nonimmigrant visas are issued for study, cultural exchange, and other purposes of a temporary nature. Nonimmigrants are allowed to remain in the United States for various periods of time depending on the nature of their visa. The time granted varies from 1 day to several years.

2. Visas available to former United States Citizens

Former United States citizens are considered to be aliens and are treated as such. They must follow the same procedure as any other alien with respect to obtaining an immigrant visa, a nonimmigrant visa, or being eligible for entry to the United States without a visa under the Visa Waiver Pilot Program. Nonimmigrants who complete a Form I–94, Arrival/Departure Record, are tracked in the INS Nonimmigrant Information System (NIIS) database. The arrival portion of the I–94 is recorded in NIIS after issuance. The departure portion is collected when the nonimmigrant departs the United States. A record of each entry is maintained in the Treasury Enforcement Computer System (TECS) if that system is queried. The TECS System is maintained by the United States Customs Service. Generally, no TECS query is made at either land or sea Ports-of-Entry.

3. Entry into the United States without a visa

United States citizens may enter the United States freely without a visa. The INS maintains no record of the entry and departure of U.S. citizens, although once again a TECS name query record could exist.

Currently there is a Visa Waiver Pilot Program whereby citizens of certain countries, who have low visa fraud rates, are allowed to enter the United States or Guam for the purpose of business or pleasure. Their stay is limited to 90 days in the United States or 15 days in Guam. These entries are also tracked in the NIIS database, as explained above, through issuance of an I–94W and TECS, if that system is queried.

Citizens of Canada, Bermuda, and certain non-citizen residents of these countries are allowed to enter the United States without visas for pleasure and business for limited periods of time. Inasmuch as no arrival documents are prepared, no information is retained in the NIIS database; however, a TECS record may exist.

Those Canadians who are working in the United States pursuant to the Canadian Free-Trade Agreement are tracked in the NIIS database.

4. Entry and Departure Records of Permanent Residents

No records are kept in the INS NIIS database regarding the movement of Permanent Resident aliens into and out of the United States. The TECS records are created at the time of entry, if the subject is queried against the TECS database.

The INS maintains files of all Permanent Residents in the Central Index System (CIS). Any changes or updates to the files, including revocation or voluntary relinquishment of Permanent Resident status, are recorded in CIS. Permanent Residents who voluntarily abandon their residence can return their alien registration receipt card to an INS officer either at an overseas INS office or American Embassy, or at an INS office in the United States. Those Permanent Residents who remain outside of the United States longer than permitted are provided the opportunity for a hearing before an immigration judge, who will determine their admissibility. Should they be found excludable, their Permanent Resident status will be rescinded and they will be excluded from entry into the United States. Finally, a Permanent Resident deported from the United States would have his/her green card cancelled.

The aforementioned data systems—NIIS, TECS, and CIS—are part of the Interagency Border Inspection System. This system allows participating government agencies to share or request data necessary for enforcement activities. No statutory change would be necessary for the INS to begin sharing this information with the participating agencies.

I hope the information provided responds to your concerns. If this office may be of assistance in the future, please let us know.

Sincerely,

DORIS MEISSNER,
Commissioner.

Enclosures [Not printed].

Appendix H:

State Department Information Relating to U.S. Citizens Relinquishing Citizenship Between January 1, 1994, and April 26, 1995

The information contained in this Appendix (Appendix Tables H–1 and H–2) is compiled from information supplied by the State Department relating to U.S. citizens who relinquished their U.S. citizenship and were issued Certificates of Loss of Nationality ("CLNs") between January 1, 1994, and April 26, 1995. The State Department information was provided in computer-generated printouts.

This information is included in this study for the following reasons:

(1) It is the understanding of the Joint Committee staff that several Members of Congress have expressed a strong interest in obtaining a list of individuals who have recently expatriated.

(2) The dates included in the report relate to the effective dates of the proposals. These dates have been provided to enable Members of Congress to assess the impact of the various effective date proposals with respect to individuals who have expatriated.

(3) The Joint Committee staff was aware that certain individuals had alleged that the State Department may have been unduly delaying the issuance of CLNs so as to ensure that certain expatriating individuals might be subject to the provisions of the Administration or other proposals. The dates included in this Appendix have been provided to enable Members of Congress to determine whether these allegations may be accurate. With respect to this allegation, the Joint Committee staff has found no evidence in the State Department lists of any systematic attempt to delay issuance of CLNs.

The Joint Committee staff edited the State Department printout to include only the information most relevant to this study. Thus, the table includes the individual's name, date of birth ("Birth Date"), date of loss of citizenship ("Loss Date"), date of application for issuance of a CLN ("Application Date"), and date a CLN was issued ("Issue Date"). The date of loss of citizenship is the date on which an expatriating act has been committed, which is the date upon which nationality is lost pursuant to the Immigration and Nationality Act. The date of application for issuance of a CLN is the date on which an individual first presented himself or herself to a U.S. consular officer seeking to relinquish citizenship. This is the date on which citizenship would be deemed to be relinquished for purposes of the Senate bill and S. 700 and H.R. 1535. The last column, listing the date on which the CLN was issued, would be the date that citizenship is deemed to be relinquished for purposes of the Administration proposal.

In the case of citizens who appear before a consular officer to take an oath of renunciation, the date of loss of citizenship and the date of application for issuance of a CLN will be the same. In other cases of loss of citizenship (i.e., for those individuals who perform an act of expatriation such as obtaining the nationality of another country with the intent to relinquish U.S. citizenship), the date of loss of citizenship could occur substantially before the date of application for issuance of a CLN. The State Department does not generally maintain on its computer system the date of application, because this date is not meaningful for State Department purposes. The Senate amendment to H.R. 831, S. 700 and H.R. 1535 would deem an individual to have lost U.S. citizenship on the application date under certain circumstances. Since this would be the relevant date for purposes of when citizenship is lost under these proposals, the State Department was asked to review source documents in order to ascertain this date if possible. The date of application was not included in the State Department printout and was supplied separately, to the extent available, by the State Department's Office of Consular Affairs for citizens who had performed an expatriating act other than formal renunciation before a Consular Officer.

The dates entered in Tables H–1 and H–2 reflect the dates contained in the State Department lists even if there was a question as to whether the date was correct. A blank in any column on the tables indicates that the relevant information was missing from the State Department computer printout. N/A and NR mean that the date could not be readily obtained from State Department files when the State Department was asked to supply application dates.

Appendix Table H-1.--U.S. DEPARTMENT OF STATE CERTIFICATES OF LOSS OF NATIONALITY ISSUED BETWEEN JANUARY 1, 1994, AND DECEMBER 31, 1994

NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Kenneally, Joseph T.	07/31/26	12/09/93	12/09/93	01/03/94
Bryceson, Deborah F.	12/01/51	11/12/93	11/12/93	01/06/94
Jespersen, Anne-Lise	07/10/25	11/17/93	11/17/93	01/06/94
Howard, Glenn F.	11/28/53	11/17/93	11/17/93	01/06/94
Fusco, Marilyn C.	03/03/37	11/24/93	N/A	01/06/94
Andersen, Katharina H.	10/24/51	11/26/93	11/16/93	01/06/94
Hendricks-Engstrom, Barbara	11/20/48	11/29/93	11/29/93	01/06/94
Kolb, Otto	11/05/21	12/20/93	12/20/93	01/06/94
Kolb, Jane A.	10/01/25	12/20/93	12/20/93	01/06/94
Zupappenheim, Alexandra C.	07/29/58	12/21/93	12/21/93	01/06/94
Liu, Chao H.				01/07/94
Chao, Alfred				01/07/94
Shing, Wing K.				01/07/94
Shing, Sau Ping T.				01/07/94
Lam, Alexa C.				01/07/94
Costa, James E.				01/07/94
Yuan, Lily S.				01/07/94
Kong, Sarina				01/07/94
Park, Edward	01/15/74	12/21/93	12/21/93	01/07/94
Gallucci, Frank L.	10/27/24	12/08/93	12/08/93	01/10/94
Gallucci, Rita M.	11/01/30	12/08/93	12/08/93	01/10/94
MacDonald, Maynard				01/11/94
MacDonald, Lydia A.				01/11/94
Lee, Monica	08/30/44	06/24/93	N/A	01/12/94
Sackett, Linda C.	11/08/44	01/12/89	N/A	01/14/94

Appendix Table H-1, continued

NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Sackett, Lee	10/09/43	01/12/89	N/A	01/14/94
Barta, Richard J.	03/27/48	07/31/90	04/10/93	01/14/94
Wallace, Sharon	10/24/52	10/22/92	N/A	01/14/94
Crounse, Kenneth P.	10/25/57	08/04/93	11/01/93	01/14/94
Bushery, James V.	12/30/47	12/30/93	12/30/93	01/18/94
Studer, Ida R.	04/03/35	12/28/94	12/28/94	01/18/94
Song, In S.	09/20/48	05/11/93	N/A	01/21/94
Kim, Bong T.	07/23/37	05/14/93	N/A	01/21/94
Simes, Erica E.	07/01/57	12/17/93		01/21/94
Xerri, Kevin A.	05/15/75	01/11/94	01/11/94	01/21/94
Sultana, Charles A.	02/02/75	01/13/94	01/13/94	01/21/94
Attard, Joanne P.	09/17/75	01/13/94	01/13/94	01/21/94
Von Einsiedel, Rosemarie	06/14/26	10/26/93	10/26/93	01/25/94
Von Einsiedel, Hildebrand C.	07/15/23	10/26/93	10/26/93	01/25/94
Wheeler, Robert J.	09/16/61	10/27/93	10/27/93	01/25/94
Litehiser, Jay J.	10/15/54	10/28/93	10/28/93	01/25/94
Blut, Almut H.	07/16/19	11/16/93	11/16/93	01/25/94
Selby, Corrine M.	01/13/71	11/22/93	11/22/93	01/25/94
Gray, Keith R.	01/22/63	11/22/93	11/22/93	01/25/94
Santa Barbara, Pamela A.	01/11/51	12/03/93	12/03/93	01/25/94
Roemer, Diane R.	07/05/43	12/07/93	12/07/93	01/25/94
Wolf, Margat	06/24/28	12/09/93	12/09/93	01/25/94
Edmonds, III Francis, C.	06/11/42	12/09/93	12/09/93	01/25/94
Oliver, James A.	03/20/49	12/14/93	12/14/93	01/25/94
Reidel, Walter G.	01/20/27	01/25/94	01/25/94	01/25/94
Paw, Bonnie S.				01/26/94
Lim, Jong T.	09/15/14	03/16/93	N/A	01/26/94

Appendix Table H-1, continued

NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Lim, Kap B.	10/09/24	03/16/93	N/A	01/26/94
Choo, Helen	02/12/62	04/15/93	NR	01/26/94
Yoo, Sungsoo K.	09/09/45	04/15/93	N/A	01/26/94
Lim, Howard S.	02/25/40	05/06/93	N/A	01/26/94
Hwang, In K.	01/01/40	05/06/93	N/A	01/26/94
Han, Min-Han	03/02/42	05/11/93	N/A	01/26/94
Park, Chang J.	06/11/38	05/14/93	N/A	01/26/94
Cho, Wonjae J.	02/09/52	05/18/93	06/23/93	01/26/94
Yoo, Agnes K.		07/27/93	N/A	01/26/94
Chon, Adela P.	06/30/55	07/27/93	08/26/93	01/26/94
Kim, Kathryn J.	06/23/39	07/27/93	N/A	01/26/94
Yoo, Danielle H.	08/06/69	07/27/93	N/A	01/26/94
Coe, Angela P.	10/31/45	12/02/93	N/A	01/26/94
Lee, Eugene S.	12/08/74	12/27/93	12/27/93	01/26/94
Lee, Pamelia C.	04/16/42	01/07/94	N/A	01/26/94
Bishop, Martha C.	10/30/19	01/25/80	N/A	01/27/94
Greer, Jason E.	05/05/75	12/01/93	12/01/93	01/27/94
Edebrant, Erik A.	08/28/27	12/10/93	12/10/93	01/27/94
Idebrandt, Erik	08/28/27	12/10/93	12/10/93	01/27/94
Bergendahl, Carl A.	03/20/52	12/15/93	12/15/93	01/27/94
Williams, Lawrence A.	10/02/49	01/11/94	01/11/94	01/27/94
Larson, Bruce E.		01/14/94	01/14/94	01/27/94
Suh, Peter D.	06/08/53	05/24/93	N/A	01/28/94
Berner, Herman C.	12/09/29	03/27/87	08/23/93	02/01/94
Eykamp, Clifford D.	08/11/57	09/04/90	N/A	02/01/94
Doughty, Robin L.		06/17/93	N/A	02/01/94
Williams, John G.	06/11/32	11/30/93	11/30/93	02/02/94

Appendix Table H-1, continued

NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Lambert, Doris B.	05/05/15	12/14/93	12/14/93	02/02/94
Lambert, Joseph L.	12/01/15	12/14/93	12/14/93	02/02/94
Weinberg, Ronald A.	06/19/51	12/16/93	12/16/93	02/02/94
Aubry, Alan	07/23/45	01/13/94	01/13/94	02/02/94
Mithcell, William	05/26/28	01/05/94	01/05/94	02/03/94
Langanke, Lisa D.	02/09/59			02/04/94
Sheldon, Jacqueline M.	06/10/24	07/06/93	N/A	02/04/94
Fuerst, Christine E.	05/07/35	09/28/93	09/28/93	02/04/94
Fuerst, Richard E.	09/03/25	09/28/93	09/28/93	02/04/94
Marks, Monika B.	09/26/66	10/21/93	10/21/93	02/04/94
McDaniel-Odeudall, Claudia A.	11/05/58	11/19/93	11/19/93	02/04/94
Gould, Bradley P.	10/20/53	11/30/93	11/30/93	02/04/94
Eckart, Marie R.	11/22/33	12/01/93	12/01/93	02/04/94
Albayati, Sabih	07/01/44	12/03/93	12/03/93	02/04/94
Martensen, Dirk C.	09/28/63	12/13/93	12/13/93	02/04/94
Dart, Robert C.	06/20/58	12/14/93	12/14/93	02/04/94
Joseph, Anna J.	07/14/64	12/21/93	12/21/93	02/04/94
Abbott, Richard S.	03/21/27	01/05/94	01/05/94	02/04/94
Kelsall, Barbara R.	04/26/38	01/05/94	01/05/94	02/04/94
Kulukundis, Stathes J.	04/14/42	01/06/94	01/06/94	02/04/94
Bronk, Richard A.	08/24/60	01/12/94	01/12/94	02/04/94
Bartlett, Renate M.	03/17/35	01/18/94	01/18/94	02/04/94
Fujisawa, Yoshinori	10/08/70	01/19/94	01/19/94	02/04/94
Perry, Winthrop S.	11/15/47	12/08/93	12/08/93	02/07/94
Kelsall, Dennis	10/11/32	01/05/94	01/05/94	02/07/94
Gallagher, John W.	02/21/38	01/25/94	01/25/94	02/07/94
Chandler, Robert R.	03/10/24	11/18/93	11/18/93	02/08/94

Appendix Table H-1, continued

NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Barth, Stanley H.	06/21/38	12/06/94	12/06/94	02/09/94
Meilak, Joseph	03/31/64	01/04/94	01/12/94	02/10/94
Negroponte, Catherine	08/05/16	01/20/94	01/20/94	02/10/94
Hanson, Wendy L.	02/07/53	01/20/94	01/20/94	02/10/94
Smith, Gail C.	03/12/75	01/27/94	01/27/94	02/10/94
Naess, Michael R.	06/18/39	12/21/93	12/21/93	02/14/94
Walker, Michael E.	03/18/57	01/11/94	01/11/94	02/14/94
Janka, James A.	03/12/71	01/12/94	01/12/94	02/14/94
West, William S.	04/27/42	01/20/94	01/20/94	02/14/94
Benfield, Carmen L.	07/02/59	01/27/94	01/27/94	02/14/94
Rosen, Michael J.	10/19/37	03/22/94	03/22/94	02/14/94
Bary, Svenja	05/23/67	04/13/94	04/13/94	02/14/94
Lee, Chul H.	04/03/19	07/05/93	N/A	02/16/94
Heule, Dorothy J.	06/23/25	10/23/93	N/A	02/16/94
Choksy, Lois D.	06/30/28	12/20/93	12/20/93	02/16/94
De Glucksbierg, Caroline S.	04/22/28	12/30/93	12/30/93	02/18/94
Zammit, Romana	05/29/75	02/02/94	02/02/94	02/18/94
Jang, Hwee Y.	08/13/53	09/14/93	N/A	02/22/94
Duncan, Erin K.	03/21/70	01/26/94	02/14/94	02/24/94
Holman, Diana M.	08/05/68	11/10/93	11/10/93	02/25/94
Winding, Ruth	08/25/54	02/10/94	02/10/94	02/25/94
Albrizzi, Alexander R.	05/28/34	02/03/94	02/03/94	03/01/94
Braunschvig, Benjamin D.	05/12/48	02/15/94	02/15/94	03/02/94
McKoloskey, Terry B.	11/15/45	02/10/94	02/10/94	03/03/94
Youn, Jung J.	01/28/40	09/14/93	N/A	03/09/94
Straker, Louis H.	02/23/42	02/01/94	02/01/94	03/10/94
Paez, Ramon A.	08/27/30	03/02/94	03/02/94	03/11/94

Appendix Table H-1, continued

NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Choi, Yong H.	02/12/42	06/10/93	10/12/93	03/14/94
Song, Joyce S.	10/08/43	07/09/93	N/A	03/14/94
Lubin, Thomas J.	09/29/47	07/19/90	N/A	03/15/94
Kim, Jung K.	11/22/54	07/09/93	N/A	03/15/94
Kim, Hee S.	09/10/47	07/22/93	N/A	03/16/94
Ezra, Regina	09/29/08	12/07/93	12/07/93	03/16/94
Park, Diana Y.	04/22/54	07/22/93	N/A	03/18/94
Sheehan, Sheila	08/08/19	02/22/94	02/22/94	03/18/94
Kim, Maggie M.	09/25/64	08/23/93	N/A	03/21/94
Tang, Jack C.				03/22/94
McGanty, Daniel M.				03/22/94
Gospodinoff, Eva J.	05/14/41	03/03/94	03/03/94	03/22/94
Schwarz, Chrissie S.	08/19/52	10/05/71	N/A	03/23/94
Hahn, Carol L.	09/09/47	03/11/94		03/23/94
Buck, John C.	08/09/50	12/05/90	01/27/93	03/24/94
Calhoun, Michael V.	12/26/41	01/12/94	01/12/94	03/29/94
Calhoun, Minna S.	01/23/42	01/12/94	01/12/94	03/29/94
Prenn, Veronica K.	04/30/56	12/16/93	12/16/93	04/04/94
Ishikawa, Takeshi	12/22/91	01/13/94	01/13/94	04/04/94
Piiparinen, Impi A.	12/10/10	01/21/94		04/04/94
Hopkins, Roy M.	01/09/28	07/05/93	NR	04/06/94
Loponen, Irja I.	08/05/17	03/21/94		04/06/94
Tseretopoulos, Constantine D.	02/23/54	11/23/93	11/23/93	04/08/94
Reiser, Michelle L.	02/01/67	02/09/94	02/09/94	04/11/94
Kim, Chang S.	02/28/30	02/22/88	NR	04/12/94
Kim, Grace	08/08/44	08/26/91	09/01/93	04/12/94
Oh, Seyoung T.	05/21/57	02/17/93	07/06/93	04/12/94

Appendix Table H-1, continued

NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Park, Ka J.	03/26/71	04/02/93	N/A	04/12/94
Kim, Jessica H.	03/16/70	04/06/93	N/A	04/12/94
Hwang, Kuy T.	07/20/38	05/06/93	08/19/93	04/12/94
Kim, Junghee L.	12/22/60	05/31/93	08/12/93	04/12/94
Byon, Yeon S.	07/10/48	06/24/93	07/07/93	04/12/94
Kim, Hahr J.	05/02/44	07/01/93	NR	04/12/94
Kyong, Remmi P.	12/11/69	07/01/93	NR	04/12/94
Richardson, Mary K.	07/16/36	07/09/93	08/09/93	04/12/94
Koh, James Y.	11/06/39	07/09/93	08/13/93	04/12/94
Kim, Sang H.	03/25/39	07/09/93	08/18/93	04/12/94
Lee, Haeja K.	12/05/47	07/09/93	N/A	04/12/94
Vasquez, Gina K.	08/16/55	07/09/93	N/A	04/12/94
Jun, Youngshil	01/09/49	07/15/93	07/30/93	04/12/94
Choo, Junghyum S.	01/24/70	07/15/93	07/28/93	04/12/94
Kim, Richard Y.	02/17/61	07/22/93	10/18/93	04/12/94
Chung, Won O.	01/01/23	07/22/93	07/26/93	04/12/94
Hong, Choo Y.	07/26/69	07/27/93	08/27/93	04/12/94
Kim, Il Y.	11/23/48	07/27/93	09/24/93	04/12/94
Kim, Wanshin	05/17/54	07/28/93	08/16/93	04/12/94
Kang, Youngkook	01/07/41	07/28/93	10/04/93	04/12/94
Huh, John	10/08/36	08/06/93	09/20/93	04/12/94
Chung, Sang K.	12/15/56	08/06/93	10/19/93	04/12/94
Cochran, Chun Y.	03/03/60	08/31/93	09/31/93	04/12/94
Shim, Jae W.	08/15/42	08/31/93	09/30/93	04/12/94
Shin, Jung R.	12/28/48	09/06/93	09/24/93	04/12/94
Kim, Yong H.	05/15/58	09/06/93	10/05/93	04/12/94
Chung, Jim G.	08/24/47	09/06/93	10/07/93	04/12/94

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NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Yoon, Tol U.	02/15/41	09/14/93	10/14/93	04/12/94
Bahk, Keith J.	02/26/61	09/14/93	10/04/93	04/12/94
Choi, Eliot Y.	05/07/49	09/23/93	09/27/93	04/12/94
Smith, Maureen E.	06/18/40	03/08/94	03/08/94	04/12/94
Bonnefoy, Philippe S.	07/01/61	10/21/93	10/21/93	04/13/94
Effron, Jack E.				04/14/94
Chew, Christopher Y.	12/24/47	01/31/94	01/31/94	04/15/94
Young, Ambrous T.				04/18/94
Chia, Winifred P.				04/18/94
Shen, Chun S.				04/18/94
Chia, Edward H.				04/18/94
Chang, Jaewoo	11/18/57	12/29/93	01/04/94	04/18/94
Reay, Samantha J.	02/17/67	10/21/93	N/A	04/19/94
Jo, Insook N.	02/25/49	06/03/93	11/03/93	04/20/94
Min, Jin K.	04/16/63	07/28/93	11/29/93	04/20/94
Ryu, Edwin	04/30/62	08/23/93	10/20/93	04/20/94
Yun, Jang S.	04/06/60	10/11/93	NR	04/20/94
Kim, Steve A.	11/08/57	10/11/93	11/08/93	04/20/94
Cho, Byung S.	09/19/43	10/11/93	11/08/93	04/20/94
Chong, Sayong	08/25/59	10/23/93	11/02/93	04/20/94
Paik, James T.	12/28/52	11/11/93	11/18/93	04/20/94
Park, Karen K.	09/30/59	11/11/93	11/26/93	04/20/94
Stebbins, James E.	10/04/38	12/16/93	03/03/94	04/20/94
Trout, Jr. Monroe E.	01/22/62	03/24/94	03/24/94	04/20/94
Kim, Young C.	04/24/40	07/05/93	N/A	04/22/94
Hahn, Young H.	05/09/46	07/09/93	07/12/93	04/22/94
Song, Young H.	06/14/43	12/29/93	N/A	04/22/94

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NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Lee, Chun K.	04/05/33	12/29/93	N/A	04/22/94
Lee, Sook J.	08/03/33	12/29/93	N/A	04/22/94
Kang, Harvey Y.	03/02/57	12/29/93	N/A	04/22/94
Kim, Helen L.	07/13/33	12/30/93	N/A	04/22/94
Thompson, Yong C.	09/18/49	01/11/94	N/A	04/22/94
Cheigh, Okhi	09/13/40	01/15/94	01/24/94	04/22/94
Lee, Chinho	03/13/70	02/04/94	02/04/94	04/22/94
Day, Peter L.	06/13/26	03/21/94	03/21/94	04/22/94
Menuhin, Yehudi	04/22/16	04/07/94	04/07/94	04/22/94
Day, Lois E.	11/26/26	03/21/94	03/21/94	04/24/94
Holland, Ouanah L.	09/13/44	02/18/94	02/18/94	04/25/94
Kim, Jae S.	10/02/38	07/01/93	N/A	04/29/94
Kim, Yong T.	02/14/27	07/05/93	N/A	04/29/94
Kim, In O.	03/28/33	07/05/93	N/A	04/29/94
Kim, Keun H.	04/09/52	12/29/93	N/A	05/02/94
Yap, Hwee Y.	07/15/46	03/24/94	03/24/94	05/03/94
Chung, Tae K.	02/18/47	07/22/93	12/06/93	05/04/94
Kim, Moses H.	02/19/58	08/06/93	N/A	05/04/94
Kim, Hyun S.	01/13/64	10/23/93	N/A	05/04/94
Kim, Eui W.	03/03/49	11/11/93	N/A	05/04/94
Gwon, Hyo J.	09/28/51	12/07/93	N/A	05/04/94
Pak, David U.	02/27/39	12/07/93	N/A	05/04/94
Ahn, Mieja	08/12/43	12/07/93	01/03/94	05/04/94
Yi, Yun J.	07/17/45	12/10/93		05/04/94
Watts, Brian L.	05/11/63	12/22/93	12/22/93	05/04/94
Lee, Joung R.	03/13/54	12/29/93	N/A	05/04/94
Doblinger, Manfred	08/23/40	04/19/94	04/19/94	05/04/94

Appendix Table H-1, continued

NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Mallick, John J.	10/02/33	04/26/94	04/26/94	05/04/94
Ho, Arthur				05/06/94
Hilton, Claudia R.	09/18/48	05/29/93	12/30/93	05/10/94
Stivers, Amelia J.	06/20/07	12/03/93	01/25/94	05/10/94
Lucky, Edward	03/03/10	04/19/94	04/21/94	05/10/94
Lucky, Verona	07/16/27	04/19/94	04/21/94	05/10/94
Mayo, William L.	05/31/31	01/26/92	04/12/94	05/13/94
Matthews, Ian D.	10/23/48	03/29/94	03/29/94	05/13/94
Sumardi, Snowerdi	11/16/69	04/18/94	04/18/94	05/13/94
Russon, Michael P.	10/15/56	04/29/94	04/29/94	05/13/94
Smith, Donald C.	07/25/22	05/04/94	05/04/94	05/13/94
Mills, Terry A.	02/28/59	02/03/93	04/07/93	05/17/94
Ueda, Iku R.	06/04/70	05/12/93	05/12/93	05/17/94
Devanney, David C.	02/05/43	04/26/94	04/26/94	05/17/94
Gilbert, Bettina	03/04/40	04/28/94	04/28/94	05/17/94
Kim, Chong S.	11/18/50	02/04/94	02/15/94	05/20/94
Zimmerman, Robert C.	07/04/35	04/07/94	04/07/94	05/20/94
Lepoutre, Roselyne	06/04/40	05/09/94	05/09/94	05/20/94
Lee, Janet K.	09/16/58	12/29/93	01/25/94	05/23/94
Frans, Mary C.	12/05/68	05/05/94	05/05/94	05/24/94
Frans, Tobias F.	12/22/69	05/05/94	05/05/94	05/24/94
Kim, James J.	11/11/59	12/29/93	01/10/94	05/27/94
Bernard, William D.	05/01/26	11/15/84	NR	05/31/94
Czarnecki, Peter M.	01/08/71	05/13/94	05/13/94	05/31/94
Handy, Myoung	03/13/63	02/01/94	N/A	06/02/94
Chia, Hsien-Hui	01/05/73	04/12/94	04/12/94	06/03/94
Chang, Julian W.				06/06/94

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NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Cheng, Shin B.				06/06/94
Chiew, Lillian Y.				06/06/94
Chin, Gary G.				06/06/94
Lee, Yuan T.				06/06/94
McGrath, William J.				06/06/94
Over, Paul C.				06/06/94
Paulon, David H.				06/06/94
Yoneda, Hiroichi	06/30/21	08/04/92	03/30/93	06/06/94
Hirotsu, Debra M.	06/13/54	03/09/93	07/08/93	06/06/94
Kumagai, Ichiro	03/20/71	03/30/93	03/30/93	06/06/94
Kaneko, Mariko	11/01/72	05/24/93	05/24/93	06/06/94
Takara, Yukiyo	01/23/42	06/03/93	06/23/93	06/06/94
Burke, Billy L.	01/17/34	07/12/93	08/10/93	06/06/94
Taguchi, Misao	08/27/47	08/17/93	10/28/93	06/06/94
Yoshioka, Michiko	08/15/42	11/10/93	02/28/94	06/06/94
Bridges, Mark A.	09/30/67	11/10/93	11/10/93	06/06/94
Takagi, Romy	06/05/72	11/12/93	11/12/93	06/06/94
Katono, Nao	09/03/73	12/02/93	12/02/93	06/06/94
Bullough, Melinda I.	08/20/71	04/28/94	04/28/94	06/07/94
Carney, John C.	04/17/41	05/11/94	5/11/94	06/07/94
Walker, Roxie S.	05/03/47	09/07/90	05/31/94	06/08/94
Walker, John W.	06/16/49	09/07/90	05/31/94	06/08/94
Xerri, Charlton M.	08/14/74	05/12/94	5/12/94	06/08/94
Sturdza, Irene	02/07/59	05/31/94	05/31/94	06/08/94
Del Grande, Martha D.		05/03/94	05/03/94	06/13/94
Del Grande, Louis F.	04/09/43	05/03/94	05/03/94	06/13/94
Dorsey, Dorothy E.	09/08/12	05/20/94	05/20/94	06/13/94

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NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Stewart, Hilde K.	10/30/25	06/01/94	06/01/94	06/13/94
Talmon-L'Armee, Herr W.	10/03/36			06/14/94
Simsek, Frau V.	08/23/71			06/14/94
Simon, Raymond S.	11/16/48	02/07/94	02/07/94	06/14/94
Perkins, Lore G.	02/27/25	02/08/94	02/08/94	06/14/94
Schmidt, Horst A.	08/11/26	02/08/94	02/08/94	06/14/94
Joglar, Rafael	11/27/63	02/09/94	02/09/94	06/14/94
Nordmann, Thomas A.	03/07/64	02/15/94	02/15/94	06/14/94
Collette, Jr. Jesse M.	09/27/41	02/15/94	02/15/94	06/14/94
Hertweck, Maria	07/10/22	02/16/94	02/16/94	06/14/94
Szolga, Laszlo N.	10/04/61	02/23/94	02/23/94	06/14/94
Haynes, Christian J.	01/12/60	02/24/94	02/24/94	06/14/94
Frieler, Dawn M.	11/17/71	03/01/94	03/01/94	06/14/94
Simset, Vanessa A.	08/23/71	03/08/94	03/08/94	06/14/94
Schumann, Peter J.	05/06/69	03/16/94	03/16/94	06/14/94
Heise, Stephany N.	07/05/74	03/17/94	03/17/94	06/14/94
Burke, Albert R.	02/09/43	03/21/94	03/21/94	06/14/94
Beguin, Margaret N.	02/01/29	03/28/94	03/28/94	06/14/94
Hill, Stephanie A.	11/16/67	03/29/94	03/29/94	06/14/94
Hamsun, Vanje K.		03/30/94	03/30/94	06/14/94
Hamsun, Vanja K.	03/03/61	03/30/94	03/30/94	06/14/94
Keulen, Susan M.	03/30/67	03/31/94	03/31/94	06/14/94
Little, David G.	05/03/44	03/31/94	03/31/94	06/14/94
Wilson, Anthony C.	10/20/57	04/13/94	04/13/94	06/14/94
Jelinek, Max Heinrich G.	05/10/65	04/14/94	04/14/94	06/14/94
Jackson, Susan E.	07/30/65	04/14/94	04/14/94	06/14/94
Gorman, Jacqueline M.	11/05/71	04/19/94	04/19/94	06/14/94

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NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Halmstad, Roger J.	04/23/26	04/22/94	04/22/94	06/14/94
Smit, Susanne M.	03/03/35	04/04/94	04/04/94	06/15/94
Casey, Jr. Harold E.	09/03/41	04/26/94	04/26/94	06/15/94
Elzie, Patrick R.	11/22/60	04/26/94	04/26/94	06/15/94
Kirechiev, Emil M.	07/07/35	04/26/94	04/26/94	06/15/94
Deane, Markus E.	02/26/74	04/28/94	04/28/94	06/15/94
Cleveland, Sinclair J.	07/27/46	04/29/94	04/29/94	06/15/94
Nashed, Naguib	07/17/21	05/03/94	05/03/94	06/15/94
Talmon-L'Armee, Werner	10/03/36	05/03/94	05/03/94	06/15/94
Brindley, Friedrich E.	01/23/51	05/05/94	05/05/94	06/15/94
Cho, Young C.	01/25/58	05/06/94	05/06/94	06/15/94
Groeger, Ruth M.	09/24/26	05/11/94	05/11/94	06/15/94
Groeger, Hans W.	07/02/18	05/11/94	05/11/94	06/15/94
Knutzen, Klaus W.	08/19/27	06/03/94	06/03/94	06/15/94
Knutzen, Caroline M.	12/14/26	06/03/94	06/03/94	06/15/94
Gurch, Anneliese	06/13/14			06/16/94
Chang, Jason				06/16/94
Gurch, Anneliese	05/13/14	02/23/94	02/23/94	06/16/94
McDonald-Buesing, Ursula B.	03/01/43	03/22/94	03/22/94	06/16/94
Moyer, John A.	02/28/45	09/16/93	09/11/93	06/22/94
Jones, Franklin A.	11/03/39	09/16/93	09/11/93	06/22/94
O'Nan, Kimberly A.	11/25/54	09/16/93	09/11/93	06/22/94
Brown, Elizabeth B.	04/25/50	09/16/93	09/11/93	06/22/94
Beavan, Bonnie J.	01/18/54	09/16/93	09/11/93	06/22/94
Saint-Phalle, Therese D.	03/07/30	06/08/94	06/08/94	06/22/94
Fischer, Patricia A.	01/25/43	03/08/94	03/08/94	06/23/94
Pierce, David M.	09/18/38	05/27/94	05/27/94	06/23/94

Appendix Table H-1, continued

NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Verin, Richard G.	01/02/47	01/30/94	06/09/94	06/27/94
Roelli, Ximena D.	03/28/18	05/04/94	05/04/94	06/28/94
Amdal, Hanne T.	03/07/50	05/13/94	05/13/94	06/28/94
Bergli, Lloyd	06/06/63	06/02/94	06/02/94	06/28/94
Lawrence, Harding L.	07/15/20	06/03/94	06/03/94	06/28/94
Lawrence, Mary G.	05/25/28	06/03/94	06/03/94	06/28/94
Hitsman, Jeffrey J.	10/20/54	06/07/94	06/07/94	06/28/94
Romann, Kathleen I.	02/24/39	06/14/94	06/14/94	06/28/94
Odfjell, Helene	09/20/65	05/23/94	05/23/94	06/29/94
Waters, Valerie C.	07/21/45	06/08/94	06/08/94	06/29/94
Tarshish, Daniel M.	10/14/69	06/08/94	06/08/94	06/29/94
Lee, Yong W.	02/25/09	02/01/94	02/19/94	06/30/94
Bang, Thomas	09/06/38	06/17/94	06/17/94	07/01/94
Dingman, Michael D.	09/29/31	06/20/94	06/20/94	07/05/94
McDonald-Buesing, Ursula B.	03/01/43	03/22/94	03/22/94	07/07/94
Browne, Gunborg M.	12/12/38	04/12/94	04/12/94	07/07/94
Rahn, Margreth A.	12/08/28	06/20/94	06/20/94	07/07/94
Johnson, Nels R.	10/05/31	06/22/94	06/22/94	07/07/94
Zimmermann, Melinda R.	12/29/54	06/28/94	06/28/94	07/07/94
Borsari, Robert A.	12/27/30	08/31/88	06/16/94	07/08/94
Venit, James S.	02/14/46	02/19/94	05/20/94	07/08/94
Pettit, Anne I.	05/17/28	06/21/94	06/21/94	07/08/94
Carlsson, Roger E.	03/15/55	05/06/94	05/06/94	07/09/94
Lincoln, Ruth E.	04/09/19	06/10/94	06/10/94	07/14/94
Lundtofte, Hanne L.	07/15/59	06/24/94	06/24/94	07/14/94
Ricketts, Anne-Margrethe	04/02/46	06/28/94	06/28/94	07/14/94
Lightbourne, Elizabeth J.	02/05/52	03/08/94	03/08/94	07/15/94

Appendix Table H-1, continued

NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Wrinkle, Timothy A.	02/28/57	03/09/94	03/09/94	07/15/94
Harkins, Pat G.	02/20/33	02/11/81	01/14/94	07/19/94
Oppenheimer, Paul L.	01/06/36	06/15/94	06/15/94	07/19/94
Gregory, Elinor A.	09/19/30	06/23/94	06/23/94	07/22/94
Song, Yong K.	07/16/62	02/12/94	03/03/94	07/25/94
Brehe, Mary R.	05/17/45	06/30/92	07/08/94	08/04/94
Ralph, David L.	04/27/34	09/10/93	09/10/93	08/04/94
Spriggs, Martha B.	12/15/24	07/04/67	06/24/94	08/05/94
Brehe, Frank R.	03/03/43	06/30/92	07/08/94	08/05/94
Shattan, Colin M.	11/25/60	06/16/94	06/16/94	08/05/94
Stockholder, Katherine S.	07/19/28	06/22/94	06/22/94	08/05/94
Burger, Barbara A.	03/25/27	07/05/94	07/08/94	08/05/94
Burger, Winton P.	10/24/26	07/05/94	07/08/94	08/05/94
Lim, Beng J.	01/07/67	07/05/94	07/05/94	08/05/94
Breinl, Yvonne P.	03/16/65	07/20/94	07/20/94	08/08/94
Abbott, Ruth F.	11/11/32	03/11/94	03/20/94	08/09/94
Heywood, James M.	02/24/69	06/27/94	06/27/94	08/11/94
Nagakura, Mochiyasu	09/26/15	07/11/41	N/A	08/12/94
Vann, Kenneth J.	09/25/66	11/26/92	N/A	08/12/94
Tanaka, Teruo T.	03/01/36	04/14/94	04/14/94	08/12/94
Onoda, Masami	11/06/72	05/09/94	05/09/94	08/12/94
Rogers, Raymond C.	06/14/45	05/11/94	08/02/94	08/23/94
Ito, Eriko S.	10/18/70	05/10/94	05/10/94	08/26/94
Gotoh, Hiroyuki	10/03/60	07/26/94	07/26/94	08/26/94
Siguas, Eija M.	11/29/67	06/12/94	06/12/94	08/29/94
Norlund, Margaret	06/25/19	06/25/94	06/25/94	08/29/94
Van Der Woude, Reinier G.	09/02/20	06/30/94	07/26/94	08/29/94

Appendix Table H-1, continued

NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Savina, Aili E.	08/23/18	07/08/94	07/08/94	08/29/94
Bodganovich, Robert R.	11/29/40	08/03/94	08/03/94	08/29/94
Mateer, William	06/13/07	08/05/94	08/05/94	08/29/94
Aboitiz, Annabelle O.	01/21/36	07/20/94	07/20/94	08/30/94
Levy, Edith	06/01/18			09/07/94
Sylwester, Jean P.	10/12/40	08/08/94	08/08/94	09/08/94
Sulwester, John H.	11/17/39	08/08/94	08/08/94	09/08/94
Coufos, Alexia	09/19/66	08/18/94	08/18/94	09/09/94
Buhler, Walter A.				09/12/94
Cha, Victor				09/12/94
Chu, David				09/12/94
Kuo, William				09/12/94
Lam, Fred				09/12/94
Locke, Thomas C.				09/12/94
Moser, Michael				09/12/94
Rothe, Maxine				09/12/94
Tsau, Ching Y.				09/12/94
Hampton, Charles M.	12/16/46	07/08/69	07/15/94	09/13/94
Hampton, Bruce R.	07/29/49	01/19/71	07/29/94	09/13/94
Batt, Terry L.	01/29/46	06/13/74	07/18/94	09/13/94
Davis, High J.	05/18/30	08/15/94	08/15/94	09/13/94
Schroth, Angelita	05/29/61	07/13/94	07/13/94	09/14/94
Hallgrimson, Daniel T.	10/04/72	07/13/94	07/13/94	09/14/94
Blaier, Frida	01/19/24	07/14/94	07/14/94	09/14/94
Hagan, Claudia L.	07/06/69	07/20/94	07/20/94	09/14/94
Halkjaer, Gerhard J.	10/17/94	08/29/94	08/29/94	09/14/94
Adkins, Peggy	07/20/74	06/09/94	06/09/94	09/15/94

Appendix Table H-1, continued

NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Cox, Cannon H.	08/01/74	06/21/94	06/21/94	09/15/94
Carter, Gerta G.	05/14/26	07/11/94	07/11/94	09/15/94
Popp, Angela I.	08/04/66	07/12/94	07/12/94	09/15/94
Pugh, Michael J.	11/09/72	07/20/94	07/20/94	09/15/94
Pearson, Carol C.	12/20/70	08/02/94	08/02/94	09/15/94
Rogo, Steve R.	06/18/55	08/09/94	08/09/94	09/15/94
Haller, Ilse	04/28/30	08/10/94	08/10/94	09/15/94
Vowe, Kathleen S.	04/14/51	08/11/94	08/11/94	09/15/94
Root, Richard W.	03/29/57	08/12/94	08/12/94	09/15/94
Lindquist, George A.	08/23/42	08/23/94	08/23/94	09/15/94
Lindquist, George A.	08/23/42	08/23/94	08/23/94	09/15/94
Bullington, Jennifer W.	11/20/57	08/24/94		09/15/94
Bullington, Jennifer W.	11/20/57	08/24/94	08/24/94	09/15/94
Kickers, Janette L.	03/28/66	08/24/94	08/24/94	09/15/94
Choate, Abigail L.	08/15/68	07/28/94	07/28/94	09/16/94
Hahn, Margrit R.	09/04/22	08/04/94	08/04/94	09/16/94
Dick, Norma I.	04/04/56	08/17/94	08/17/94	09/16/94
Inachin, Kyra Tatjana I.	05/19/68	09/08/94	09/08/94	09/16/94
Carmin, Richard J.	11/16/62	09/08/94	09/08/94	09/16/94
Warnick, Cuanitta M.	10/03/68	06/13/94	06/13/94	09/21/94
Zannin, David M.	11/08/67	06/14/94	06/14/94	09/21/94
Easterling, Melanie A.	09/08/71	06/15/94	06/15/94	09/21/94
Jacobson, Ronald J.	08/02/63	06/21/94	06/21/94	09/21/94
Braun, Beatrice V.	01/16/56	06/27/94	06/27/94	09/21/94
Reisser, Sigrid E.	07/13/40	06/28/94	06/28/94	09/21/94
Goessing, Diane M.	06/15/46	07/19/94	07/19/94	09/21/94
Wieler, Harold L.	07/27/37	08/05/94	08/05/94	09/21/94

Appendix Table H-1, continued

NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Wiltschek, Marion E.	07/11/73	08/05/94	08/05/94	09/21/94
Johnson, Marion E.	07/11/73	08/05/94	08/05/94	09/21/94
Loorits, Aleksander	10/11/32	06/20/94	06/20/94	09/22/94
Proctor, Steven A.	09/19/60	06/29/94	06/29/94	09/22/94
Schachinger, Hildegard A.	06/29/50	07/25/94	07/25/94	09/22/94
Sierz, Hannelore M.	08/03/51	08/01/94	08/01/94	09/22/94
Joyner, Gregory	12/31/57	08/09/94	08/09/94	09/22/94
Foxx, Robert M.	11/08/65	08/22/94	08/22/94	09/22/94
Wiemann, Daniel	03/14/68	08/29/94	08/29/94	09/22/94
Ohme, Margarethe	03/12/35	07/26/94	07/26/94	09/23/94
Ohme, Joachim H.	05/10/32	07/26/94	07/26/94	09/26/94
Williams, Jones L.	02/03/26	08/17/94	08/17/94	09/27/94
Petritz, Mary J.	08/06/31	08/30/94	08/30/94	09/27/94
Swiney, Sean O.	05/26/67	09/09/94	09/09/94	09/27/94
Priegnitz, Rudolph H.	07/20/30	09/09/94	09/09/94	09/27/94
Lane, Arnold H.	06/10/24	09/13/94	09/13/94	09/27/94
Brown, Jr. Howard W.	08/26/38	09/13/94	09/13/94	09/27/94
Steffen, Claudia K.	06/13/71	03/14/94	03/14/94	09/29/94
Aizcorbe, Alexandra I.	12/21/74	03/15/94	03/15/94	09/29/94
Alburger, Robert A.	07/14/66	03/15/94	03/15/94	09/29/94
Seidl, Josef	05/12/22	03/17/94	03/17/94	09/29/94
Cardenas, Ronnie E.	11/18/61	03/17/94	03/17/94	09/29/94
Chapman, Bernard R.	02/28/74	03/17/94	03/17/94	09/29/94
Nomura, Timothy E.	02/20/60	03/17/94	03/17/94	09/29/94
Greer, Laurie E.	08/05/73	03/17/94	03/17/94	09/29/94
Graef, Evelyn L.	04/18/69	03/17/94	N/A	09/29/94
Reed, Barbara E.	07/22/60	03/21/94	03/21/94	09/29/94

Appendix Table H-1, continued

NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Jones, Jimmie D.	04/22/44	03/24/94	03/24/94	09/29/94
Raffaele, Melanie F.	11/03/70	03/28/94	03/28/94	09/29/94
Macke, Linda E.	02/03/62	03/30/94	03/30/94	09/29/94
Steponaitis, Erika	07/14/28	04/05/94	04/05/94	09/29/94
Hausler, Ludwig	04/24/36	05/02/94	05/02/94	09/29/94
Abraham, David M.	04/28/72	09/15/94	09/15/94	09/29/94
Bugeja, Stephen S.	11/11/52	02/25/94	08/17/94	09/30/94
Portelli, Sharon J.	10/03/75	06/21/94	06/21/94	09/30/94
Pixley, Ralph E.	09/14/29	06/22/94	06/22/94	09/30/94
Jadden, William B.	03/02/18	06/29/94	07/01/94	09/30/94
Jadden, Audrey S.	02/27/24	06/29/94	06/29/94	09/30/94
Iossifoglu, Nora	05/19/29	07/05/94	07/05/94	09/30/94
Mifsud, Lisa A.	08/11/75	08/02/94	08/02/94	09/30/94
Muscat, Jeffrey	05/27/76	08/03/94	08/03/94	09/30/94
Aquarone, Rene-Christophe	03/06/56	08/04/94	08/04/94	09/30/94
Micallef, Anthony L.	08/25/75	08/05/94	08/05/94	09/30/94
Fadi, Alexandra B.	06/11/62	08/18/94	08/18/94	09/30/94
Curmi, Brian J.	10/21/75	08/23/94	08/23/94	09/30/94
Gut, Marcel	01/15/22	08/31/94	08/31/94	09/30/94
Sissener, Pal F.	10/31/59	09/08/94	09/08/94	09/30/94
Marvel, Jr. William M.	02/28/49	09/08/94	09/08/94	09/30/94
Schwartz, Solly	09/30/16	06/15/65	08/24/94	10/05/94
Jones, Audrey D.	05/17/24	08/17/94	08/17/94	10/05/94
Leong, Bing S.	09/02/33	09/22/94	09/22/94	10/05/94
Leong, Florence M.	10/17/39	09/23/94	09/23/94	10/05/94
Christiana, Marguerite H.	11/09/01	08/23/94	08/23/94	10/06/94
Byers, Jennifer J.	11/09/56	08/25/94	08/25/94	10/07/94

Appendix Table H-1, continued

NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Beusted-Smith, Sheila A.	09/28/35	09/02/94	09/02/94	10/07/94
Brocklebank, William F.	04/13/76	09/06/94	09/06/94	10/07/94
Hunt, Lloyd P.	10/30/60	09/19/94	09/19/94	10/07/94
Thollembeek, Monica L.	10/24/62	09/21/94	09/21/94	10/07/94
Ellis, Nicole C.	06/24/72	09/23/94	09/23/94	10/07/94
Ellis, Carmen I.	07/16/47	09/23/94	09/23/94	10/07/94
Bowles, Michael F.	11/07/38	11/18/77	08/30/94	10/12/94
Nyitrai, Nina J.	04/30/65	05/08/90	07/13/94	10/12/94
Myrans, Katherine S.	05/26/11	06/08/90	N/A	10/12/94
Kalkman, Janet	03/09/32	03/25/91	09/13/94	10/12/94
Koh, Ik-Leng M.	04/12/73	08/26/94	08/26/94	10/12/94
Austin, Roswell M.	05/19/23	08/31/94	09/07/94	10/12/94
Russell, James R.	10/25/55	09/16/94	09/16/94	10/12/94
Franks, Rose	01/06/18	10/03/94	10/03/94	10/12/94
Martineau, Jean A.	01/12/30	09/20/94	09/20/94	10/13/94
Braithwaite, William	02/14/29	06/09/94	06/09/94	10/19/94
Braithwaite, Catherine A.	07/16/33	06/09/94	06/09/94	10/19/94
Goodwin, Patrick B.	05/03/45	06/09/94	06/09/94	10/19/94
Johnson, Rebecca J.	02/27/75	10/06/94	10/06/94	10/20/94
Stancioff, Ivan N.	04/01/29	10/17/94	10/17/94	10/20/94
Sheehan, William K.				10/24/94
Eddis, Christopher F.				10/24/94
Luk, Henry C.				10/24/94
Kroos, Patrick R.				10/24/94
Yu, David				10/24/94
Taylor, Ross S.	04/11/35	10/12/94	10/12/94	10/24/94
Sol, Anne E.	06/29/55	07/08/94	07/08/94	10/25/94

Appendix Table H-1, continued

NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Cates, Richard I.	07/28/52	09/13/94	09/13/94	10/26/94
Reuteria, Roland A.	09/05/64	10/14/94	10/14/94	10/26/94
Renteria, Roland A.	09/05/64	10/14/94	10/14/94	10/26/94
Wills, Russel M.	09/25/42	10/17/94	10/17/94	10/26/94
Hopwood, Beryl G.	05/19/05	06/07/94	06/07/94	10/27/94
Pidun, Anita	09/07/51	10/05/94	10/05/94	10/27/94
Guld, Barry	02/12/56	10/24/94	10/24/94	11/01/94
Quimby, William E.	08/10/29	06/24/75	08/25/94	11/02/94
Nahmias, Marina F.	12/04/47	10/24/94	10/24/94	11/08/94
Walton, Dan W.	03/03/35	03/24/94	03/24/94	11/10/94
Garner, Helmut G.	02/17/57	05/05/94	05/05/94	11/10/94
Dizzy, Test M.	04/01/78	10/10/94	N/A	11/11/94
Kangas, Katherine E.	04/11/14	03/19/93	08/30/94	11/15/94
Dahlberg, Robin L.	09/15/52	05/26/94	10/25/94	11/15/94
Lundsager, Soren	06/04/49	06/03/94	09/01/94	11/15/94
Iacobucci, Nancy E.	10/17/37	10/27/94	10/27/94	11/15/94
Christenson, Sheila J.	03/02/52	11/08/94	11/08/94	11/15/94
Barnette, Kathleen C.	02/23/42	06/17/94	N/A	11/16/94
Theodoli-Braschi, Maria	03/11/46	10/20/94	10/20/94	11/16/94
Jurcenko, Nikolaj	10/06/58	11/02/94	11/02/94	11/21/94
Jones, Leonore A.	06/22/58	11/04/94	11/04/94	11/21/94
Roberts, Donald E.	05/16/34	09/20/94	09/20/94	11/25/94
Boisvert, Joseph H.	12/01/24	06/02/51	10/05/94	11/28/94
Christenson, Clarence G.	01/18/45	11/23/94	11/23/94	11/29/94
McGowan, Michael J.	09/30/56	05/10/94	10/02/94	12/05/94
O'Mara, Michael P.	06/16/44	05/27/94	N/A	12/05/94
Morgan, Nina M.	06/27/53	09/05/94	10/17/94	12/05/94

Appendix Table H-1, continued

NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Ho, Jaime C.	12/05/72	09/09/94	09/09/94	12/05/94
Christenson, Lowell G.	08/12/42	11/22/94	11/22/94	12/07/94
Cox, Victoria M.	01/30/48	11/29/94	11/29/94	12/07/94
Kern, Gertrude G.	02/19/58			12/13/94
De Bergendal, Thomas M.	11/17/50	11/02/94	11/02/94	12/15/94
Williams, William H.	06/29/41	11/16/94	11/16/94	12/15/94
Lonergan, Simon J.	10/12/21	11/18/94	11/18/94	12/15/94
Lonergan, Ann B.	12/28/22	11/18/94	11/18/94	12/15/94
Pulver, George M.	04/19/27	11/07/94	11/07/94	12/16/94
Gyll, Robert D.	03/10/65	01/17/92	01/17/92	12/20/94
Hendele, Yvonne M.	03/15/59	10/19/94	10/19/94	12/20/94
Warren, Christina M.	10/13/66	10/27/94	10/27/94	10/20/94
Ahman, Jane V.	02/03/49	11/04/94	11/04/94	12/20/94
Asulin, Gedalin	11/10/33	11/21/94	11/21/94	12/20/94
Montague, James	06/06/27	04/22/92	10/12/94	12/22/94
Cohn, Steven A.	05/14/42	08/24/93	10/06/94	12/22/94
Grolman, Aubrey	10/04/25	02/10/94	N/A	12/22/94
Hahn, Amanda T.	04/29/76	11/21/94	11/21/94	12/22/94
Rediker, Dolly R.	02/06/08	12/02/94	12/02/94	12/22/94

Appendix Table H-2.--U.S. DEPARTMENT OF STATE CERTIFICATES OF LOSS OF NATIONALITY ISSUED BETWEEN JANUARY 1, 1995, AND APRIL 26, 1995

NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Wang, Ki J.	03/05/45	07/28/93	10/13/94	01/05/95
Chang, Nae H.	10/24/50	06/02/94	10/14/94	01/05/95
Chi, Mina	08/02/38	09/15/94	10/14/94	01/05/95
Sihn, Paul K.	08/08/59	09/15/94	10/13/94	01/05/95
Weiss, Insuk K.	03/18/64	09/15/94	10/25/94	01/05/95
Skipwith, Lee	09/08/22	09/16/94	09/16/94	01/05/95
Lee, Terry	06/12/39	10/08/94	10/13/94	01/05/95
Yoo, Hang J.	08/08/55	10/11/94	10/13/94	01/05/95
Choe, Byung J.	10/24/60	10/11/94	10/14/94	01/05/95
Matray, Mark S.	04/04/58	12/09/94	12/9/94	01/05/95
Bowden, Beatrice L.	02/01/33	12/12/94	12/12/94	01/05/95
Bowden, Gordon T.	01/25/32	12/12/94	12/12/94	01/05/95
Sanchez, Sandra V.	09/13/73	12/14/94	12/14/94	01/05/95
Mathysen-Gerst, Nicole A.	05/18/60	12/15/94	12/15/94	01/05/95
Poston, Gail P.	06/26/44	12/20/94	12/20/94	01/05/95
Baker, William S.	09/09/32	12/20/94	12/20/94	01/05/95
Feininger, Tomas	09/21/35	12/20/94	12/20/94	01/05/95
Kim, Yung S.	07/27/32	04/27/94	10/21/94	01/10/95
Chi, Isaac H.	09/30/56	05/06/94	09/01/94	01/10/95
No, Gi S.	03/20/61	05/24/94	10/17/94	01/10/95
Son, Sarah	12/10/70	06/04/94		01/10/95
Lee, Dong-Ju	01/02/69	07/07/94	11/15/94	01/10/95
Kim, Sung W.	01/01/40	09/08/94	11/03/94	01/10/95
Joyce, Yi	08/27/57	09/08/94		01/10/95

Appendix Table H-2, continued

NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Lee, Jae C.	03/21/34	09/08/94	12/20/94	01/10/95
Kim, Keun C.	07/08/36	09/08/94	11/03/94	01/10/95
Lee, Kyoung J.	08/19/56	09/09/94	12/01/94	01/10/95
Kim, Holim	11/23/33	09/15/94	11/09/94	01/10/95
Chough, Sungjung	08/24/41	09/15/94	10/20/94	01/10/95
Byung, Hee S.	04/18/61	09/15/94		01/10/95
Suh, Harold H.	03/04/57	09/15/94	11/01/94	01/10/95
Kwon, Nam S.	10/15/38	09/15/94	12/20/94	01/10/95
Liu, Lo-Chung	04/02/39	09/15/94	9/15/94	01/10/95
Kim, James S.	03/09/53	10/08/94	10/21/94	01/10/95
Choi, Jenny S.	08/18/53	10/08/94	10/24/94	01/10/95
Choi, Dosoung P.	10/18/52	10/08/94	10/24/94	01/10/95
Lee, Eue-Jae	06/19/47	10/08/94	10/11/94	01/10/95
Sonn, Stephen S.	05/30/63	10/08/94	10/18/94	01/10/95
Francisco, Nancy K.	11/29/35	10/09/94	10/31/94	01/10/95
Chang, June L.	12/28/32	10/09/94	10/20/94	01/10/95
Khwarg, Dong S.	04/10/34	10/11/94	10/27/94	01/10/95
Kim, Shinja K.	11/22/40	10/11/94	10/08/94	01/10/95
Park, Jeong B.	07/25/29	10/11/94	10/20/94	01/10/95
Cho, Manny S.	08/18/54	10/11/94	11/29/94	01/10/95
Kim, Kwang C.	08/14/55	10/11/94	12/09/94	01/10/95
Khwarg, Edward	10/06/27	10/11/94	10/27/94	01/10/95
Won, Joung T.	08/06/61	10/20/94	10/25/94	01/10/95
Ahn, Moses S.	09/13/50	10/20/94	10/21/94	01/10/95
Koo, Esun L.	10/22/68	10/20/94	11/07/94	01/10/95
Park, Byung, C.	12/08/59	10/20/94	10/27/94	01/10/95
Novotny, Michelle	01/24/64	10/20/94	10/31/94	01/10/95

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NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Jang, Frank	03/09/45	10/20/94	10/31/94	01/10/95
Ham, Kun S.	11/22/44	11/08/94	11/15/94	01/10/95
Raines, Raymond S.	04/26/57	11/08/94	11/22/94	01/10/95
Kim, Jung K.	12/25/54	11/08/94	12/15/94	01/10/95
Ahn, Youngok	12/29/32	11/11/94	11/21/94	01/10/95
Ahn, Chunghee	05/02/34	11/11/94	11/21/94	01/10/95
Lee, Kil J.	09/23/44	11/12/94	11/16/94	01/10/95
Redmond, Tok C.	03/07/52	11/12/94	11/23/94	01/10/95
Rector, Gary C.	06/11/43	11/17/94	11/17/94	01/10/95
Choy, Arthur J.	03/29/60	12/02/94	12/02/94	01/10/95
Han, Jang S.	01/19/39	12/05/94	12/20/94	01/10/95
Kim, Daniel J.	04/27/51	12/05/94	12/06/94	01/10/95
Park, Jane	10/30/70	12/16/94	12/16/94	01/10/95
Lee, Sehoon	12/22/49	12/16/94	12/16/94	01/10/95
Bae, Kenney S.	08/15/62	10/23/93		01/11/95
Lee, Sung J.	09/07/55	11/04/94	12/19/94	01/11/95
Chey, Anthony P.	12/03/60	12/16/94	12/16/94	01/11/95
Ip, Moon W.	09/10/43	11/28/94	11/28/94	01/12/95
Ip, Maria P.	12/29/45	11/28/94	11/28/94	01/12/95
Liley, William R.	04/03/50	12/21/94	12/21/94	01/12/95
Cheng, Su M.	04/07/46	12/21/94	12/21/94	01/12/95
Yu, Albert J.	05/31/52	12/27/94	12/27/94	01/12/95
Steiner, Henry	02/13/34	12/30/94	12/30/94	01/12/95
Lam, Anthony C.	05/09/54	12/30/94	12/30/94	01/12/95
Kang, Helen L.	03/30/64	12/30/93	03/24/94	01/23/95
Cho, Mikyung	08/30/57	01/11/94	02/28/94	01/23/95
Pak, Ji, Y.	05/03/63	02/12/94	02/17/94	01/23/95

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NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Yoo, In K.	02/06/55	03/04/94	02/17/94	01/23/95
Lee, William	05/12/63	03/04/94	05/03/94	01/23/95
Park, Byung C.	04/07/63	05/19/94	06/24/94	01/23/95
Kang, Dongsoo	11/07/58	05/19/94	05/23/94	01/23/95
Wee, Shin S.	01/11/48	05/24/94	08/30/94	01/23/95
Oh, Stephanie S.	05/10/60	06/16/94	07/01/94	01/23/95
Pak, Charles	10/05/59	09/08/94	01/09/95	01/23/95
Kim, Song S.	07/26/54	09/08/94	09/23/94	01/23/95
Kim, Dok S.	03/21/47	09/15/94	09/27/94	01/23/95
Koo, Leah H.	10/30/64	10/07/94	12/27/94	01/23/95
Yoo, Tal S.	04/30/42	10/24/94	12/22/94	01/23/95
Parks, James K.	10/22/68	11/02/94	12/23/94	01/23/95
Enriquez, Porfirio Q.	04/28/42	12/01/94	12/01/94	01/23/95
Kim, Duke T.	12/13/49	12/05/94	01/03/95	01/23/95
Shin, Jae C.	11/28/25	12/05/94	12/05/94	01/23/95
Shin, Theresa	01/02/31	12/05/94	12/05/94	01/23/95
Van Wynen, Robert F.	02/18/67	12/07/94	12/07/94	01/23/95
Yang, Agnes M.	05/20/60	12/23/94	12/23/94	01/23/95
Kim, Michael W.	05/10/59	12/27/94	12/27/94	01/23/95
Kim, Barnabas K.	10/14/56	12/30/94	01/10/95	01/23/95
Yoon, Charles S.	04/23/54	12/30/94	01/05/95	01/23/95
Abert, Gerda	09/24/39	10/13/94	10/13/94	01/24/95
Maryoz, Elizabeth A.	06/25/32	10/19/94	10/19/94	01/24/95
Hofmann, Monika I.	09/10/54	11/10/94	11/10/94	01/24/95
James, Julia H.	01/09/72	11/17/94	11/17/94	01/24/95
Chandhry, Christel	01/19/39	11/21/94	11/21/94	01/24/95
Herzke, Walter E.	04/17/70	11/22/94	11/22/94	01/24/95

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NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Jones-Schmidt, Leslie A.	07/31/70	11/23/94		01/24/95
Henn, Ivonne C.	12/09/69	11/29/94		01/24/95
Slepian, Michael	05/29/56	11/29/94	11/29/94	01/24/95
Taylor, Andrea M.	07/10/74	12/08/94	12/08/94	01/24/95
Schneider, Gerlinde G.	02/19/58	12/13/94	12/13/94	01/24/95
Rynevicz, Lilo (Liesel)	04/22/26	12/14/94		01/24/95
Nashif, Taisir N.	03/23/40	12/21/94	12/21/94	01/25/95
Maura, Virginia M.	10/11/14	12/22/94	12/21/94	01/25/95
Besso, Marc J.	06/29/31	09/30/71	12/20/94	01/31/95
Bankson, Beverly O.	03/01/22	12/13/77	08/31/94	01/31/95
Bankson, Douglas H.	05/13/20	12/13/77	08/31/94	01/31/95
Hartvikson, Robert A.	12/05/54	06/01/85		01/31/95
Young, Michelle K.	11/06/67	07/28/94	10/05/94	01/31/95
Blackwell, Bruce I.	02/06/36	09/06/94	12/19/94	01/31/95
Brennan, Paul D.	08/28/20	12/07/94	12/07/94	01/31/95
Riva, John F.		12/08/94	12/08/94	01/31/95
Haac, Norman M.	10/04/42	12/13/94	12/13/94	01/31/95
Pfeiffer, John W.	07/10/37	12/13/94	12/13/94	01/31/95
Shaffer, Sally J.	03/23/41	12/20/94	12/20/94	01/31/95
Oestreicher, James H.	05/26/56	12/21/94	12/21/94	01/31/95
Tinnerman, George A.	07/17/30	12/22/94	12/22/94	01/31/95
Holmen, Denise M.	01/02/48	12/24/94	12/24/94	01/31/95
Stine, Gregory W.	02/23/50	12/29/94	12/29/94	01/31/95
Wise, Richard S.	08/27/27	12/29/94	12/29/94	01/31/95
Koffman, Myrna	04/04/36	01/10/95	01/10/95	01/31/95
Persson, Kathleen J.	02/08/51	01/11/95	01/11/95	01/31/95
Kim, Susie I.	02/02/53	01/01/94	05/12/94	02/01/95

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NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Kim, Joseph K.	10/01/47	02/01/94	05/12/94	02/01/95
Kim, Joy J.	05/13/53	04/13/94	05/17/94	02/01/95
Kim, Linda	11/14/44	04/27/94	05/12/94	02/01/95
Lee, Bun S.	04/18/41	06/30/94	08/29/94	02/01/95
Van Riet, Lieven J.	01/23/32	12/12/94	12/12/94	02/01/95
Nilsson, Klara B.	09/09/41	01/12/95	01/12/95	02/01/95
Cho, Youngsik	01/08/44	11/11/93	01/24/94	02/02/95
Song, Joon S.	02/22/51	12/07/93	01/14/94	02/02/95
Noh, Seijon	09/10/43	12/29/93	02/22/94	02/02/95
Kim, Myung S.	09/07/31	12/29/93	02/28/94	02/02/95
Ko, Grace H.	02/14/63	12/30/93	06/23/94	02/02/95
Hwang, Joseph	10/18/42	01/11/94	02/18/95	02/02/95
Hwang, Sang M.	11/15/45	01/11/94	02/18/95	02/02/95
Chung, Il-Sung	04/08/40	01/11/94	06/30/94	02/02/95
Choi, Won-Sup	01/19/18	02/04/94	03/02/94	02/02/95
Han, Sang J.	02/09/40	02/04/94	04/18/94	02/02/95
Yun, Yong S.	03/22/42	03/08/94	03/24/94	02/02/95
Park, Won-Hong W.	06/11/42	04/07/94	04/19/94	02/02/95
Lee, Suja	06/29/45	04/12/94	04/29/94	02/02/95
Kim, Kay K.	08/23/48	04/13/94	04/26/94	02/02/95
Im, Suk J.	11/05/32	04/13/94	04/21/94	02/02/95
Kwon, Jaehyon	04/28/62	04/13/94	04/17/94	02/02/95
Chung, Jeanhyun C.	04/25/41	04/13/94	07/08/94	02/02/95
Park, Kee E.	05/07/57	04/26/94	04/29/94	02/02/95
Kwak, Rose S.	04/05/40	05/19/94	05/23/94	02/02/95
Kwak, John S.	08/01/38	05/19/94	05/23/94	02/02/95
Cha, Jung J.	09/27/40	05/24/94	06/07/94	02/02/95

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NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Synn, Byounghi	01/12/38	05/24/94	07/15/94	02/02/95
Choi, Robert	08/19/72	06/04/94	06/24/94	02/02/95
Kim, Soon K.	05/11/56	08/08/94	08/16/94	02/02/95
Park, Jeanne J.	07/10/71	08/09/94	08/23/94	02/02/95
Chung, Jane E.	07/01/66	08/09/94	08/11/94	02/02/95
Camilleri, Angel S.	03/01/76	01/13/95	01/13/95	02/02/95
Krayenbuhl, Christopher J.	07/25/58	11/10/94	11/10/95	02/03/95
Herrmann, Walter L.	03/28/23	11/18/94	11/18/94	02/03/95
Morse, Jerry	03/22/73	09/02/91		02/06/95
Kim, Andrew I.	07/16/50	12/29/93	03/17/94	02/06/95
Cruz, Teodoro C.	04/27/60	03/17/94		02/06/95
Kim, Helen D.	04/06/41	04/16/94	10/07/94	02/06/95
Kim, Chong S.	09/29/64	05/06/94	05/23/94	02/06/95
Kim, John H.	01/16/39	05/19/94	09/29/94	02/06/95
Kim, Choon W.	02/14/61	06/02/94	09/23/94	02/06/95
Kim, Moses Y.	08/11/46	06/16/94	07/14/94	02/06/95
Kim, Seung S.	10/18/57	06/18/94	09/05/94	02/06/95
Choi, Min G.	01/07/71	07/28/94	07/28/94	02/06/95
Seidler, Eleanor D.	11/22/19	01/27/95	12/07/94	02/06/95
Donovan, James L.	05/17/54	02/17/95		02/06/95
O'Donnell, Charles O.	11/06/58			02/07/95
Laessig, Lana D.	05/27/40	08/17/77	08/22/94	02/07/95
Nye, Paul W.	09/01/44	11/27/92	12/22/94	02/07/95
Hahn, Theodore	02/21/36	10/22/93	04/13/94	02/07/95
Kang, Timothy Y.	04/17/54	02/04/94	06/02/94	02/07/95
Shin-Davis, Kyung R.	03/22/54	02/16/94	05/26/94	02/07/95
Ho, Lewis J.	09/09/62	03/04/94		02/07/95

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NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Chin, Sung A.	09/27/51	04/12/94	04/19/94	02/07/95
Choy, Yoon K.	09/17/46	04/12/94	07/26/94	02/07/95
Yoon, Young R.	04/05/57	04/16/94	04/22/94	02/07/95
Kang, Youn C.	09/11/54	04/16/94	05/10/94	02/07/95
Darden, Dorothy L.	01/27/42	04/20/94	10/20/94	02/07/95
Darden, Stephen C.	11/14/42	04/20/94		02/07/95
Chung, Kyu S.	06/06/48	04/26/94	06/17/94	02/07/95
Balch, Chong P.	01/05/58	05/24/94	06/02/94	02/07/95
Shin, Hogang S.	04/13/39	06/02/94	06/17/94	02/07/95
Jung, Eui S.	10/21/59	06/04/94	07/25/94	02/07/95
Cho, Joon S.	12/06/50	06/18/94	08/10/94	02/07/95
Lee, Ok S.	08/24/50	06/30/94	07/26/94	02/07/95
Kwon, Ikhwan	02/04/58	07/07/94	08/29/94	02/07/95
Lee, Yong H.	11/20/55	07/07/94	10/06/94	02/07/95
Park, Chan H.	08/18/71	07/25/94	07/25/94	02/07/95
Choi, Min A.	08/05/69	07/28/94	07/28/94	02/07/95
Song, Jane K.	08/03/71	08/09/94	08/26/94	02/07/95
Shin, Mina		08/14/94	08/14/94	02/07/95
Bailey, Chong M.	09/15/56	09/08/94	09/22/94	02/07/95
Lee, Inchul	10/17/54	09/08/94	09/22/94	02/07/95
Nam, Haejung M.	04/02/74	09/22/94	09/22/94	02/07/95
Errington, Anthony F.	10/28/38	11/16/94	11/16/94	02/07/95
Leonard, John S.	08/08/40	08/11/94		02/08/95
Cartier, Alain L.	06/11/57	11/29/94	11/29/94	02/08/95
Rosen, Andrew W.	12/27/38	11/29/94	11/29/94	02/08/95
Smith, Christopher E.	06/06/36	11/30/94	11/30/94	02/08/95
Owen, Ruth T.	01/14/29	12/02/94	08/15/94	02/08/95

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NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Schmidt, Jeffrey L.	03/17/53	12/07/94	12/07/94	02/08/95
Polonsky, Leonard S.	04/13/27	12/12/94	12/12/94	02/08/95
Bernstein, Joseph F.	02/10/18	12/22/94	12/22/94	02/08/95
Heinz, Barbro E.	05/21/37	12/28/94	12/28/94	02/08/95
Martin, William E.	12/19/41	01/20/95	01/20/95	02/08/95
Spargo, Alan	06/23/36	01/23/95	01/23/95	02/08/95
Saunders, Betty G.	07/29/25	01/30/95	12/15/94	02/08/95
Houold, Lucy H.	03/06/68	01/10/85		02/09/95
Fabi, Maria	01/23/29	11/03/93	11/03/94	02/09/95
Ribeira, Ernest G.	10/05/48	05/17/94	05/17/94	02/09/95
Schnobrich, Timothy J.	04/18/65	09/13/94		02/09/95
Fabi, Johann	06/03/22	09/15/94		02/09/95
Law, Helen Hong Y.	12/15/52	09/21/94	09/21/94	02/09/95
Moeller, Manuela H.	06/07/61	10/17/94	10/17/94	02/09/95
Mackerron, Calllvin W.	07/30/47	10/19/94	10/19/94	02/09/95
Mackerron, Calvin W.	07/30/47	10/19/94	10/19/94	02/09/95
Scherer, Franzistra M.	02/22/38	10/25/94	10/25/94	02/09/95
Kellar, Stephen	02/25/46	11/08/94	11/08/94	02/09/95
Marloew, Richard L.	06/04/25	11/10/94		02/09/95
Kieffer, Diana K.	03/12/73	11/15/94	11/15/94	02/09/95
Stubits, Brigitte M.	02/28/52	11/16/94	11/16/94	02/09/95
Albright, Sandra L.	09/08/73	11/17/94	11/17/94	02/09/95
Rogers, Franz A.	11/06/55	11/22/94		02/09/95
Rogers, Elisabeth	07/09/30	12/09/94	12/09/94	02/09/95
Machurek, Maria	03/23/15	12/13/94	12/13/94	02/09/95
Sendele, Hermann	04/26/41	12/19/94	12/19/94	02/09/95
Ambros, Dieter H.	02/21/30	12/20/94	12/20/94	02/09/95

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NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Urbach, Karina D.	06/23/68	01/18/95	01/18/94	02/09/95
Winter, Ingrid	07/15/25	03/21/94		02/10/95
Winter, Werner	10/25/23	03/21/94	03/21/94	02/10/95
Winkler-Vinjuleov, Juliana D.	10/07/49	07/20/94	07/20/94	02/10/95
Sprecht, Dieter B.	06/29/31	09/07/94	09/07/94	02/10/95
Mura, Rosemarie M.	03/06/29	10/17/94	10/17/94	02/10/95
Sakurai, Giesela E.	04/10/36	11/07/94	11/07/94	02/10/95
Schmueckle, Karle E.	04/23/29	11/14/94	11/14/94	02/10/95
Thomas, Carrie L.	08/07/68	11/17/94	11/17/94	02/10/95
Voegele, Frederick	11/26/24	11/19/94	11/19/94	02/10/95
Voegele, Hedy C.		11/23/94	11/23/94	02/10/95
Shin, Ho S.	01/26/59	01/26/59	05/19/94	02/13/95
Bae, Kenny S.	08/15/62	10/23/93	12/06/93	02/13/95
Choung, Michelle	02/08/41	12/07/93	02/24/93	02/13/95
Martin, Kevin L.	03/03/67	12/07/93	03/22/94	02/13/95
Chang, Hong B.	10/01/57	12/29/93	05/12/94	02/13/95
Kay, Angela E.	08/16/61	01/11/94	01/18/94	02/13/95
Choi, Jung S.	07/20/26	01/11/94	01/25/94	02/13/95
Ku, Hee C.	12/14/61	01/11/94	03/11/94	02/13/95
Chung, Kyung A.	09/26/54	02/01/94	03/14/94	02/13/95
Lee, Hak S.	06/10/52	02/01/94	02/18/94	02/13/95
Shinn, Sang J.	08/01/61	02/03/94	03/28/94	02/13/95
Kang, Chang U.	07/15/45	02/03/94	02/18/94	02/13/95
Kang, In K.	03/23/46	02/03/94	02/18/94	02/13/95
Lee, Chan S.	07/28/61	02/03/94	02/24/94	02/13/95
Kim, Ezra K.	07/01/49	02/04/94	07/26/94	02/13/95
An, In Y.	11/25/62	02/04/94	08/01/94	02/13/95

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NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Yoon, Chang Y.	05/02/47	02/12/94	03/31/94	02/13/95
Chang, Jungyol	12/11/29	02/12/94	03/18/94	02/13/95
Kim, Pil S.	08/29/31	02/12/94	03/03/94	02/13/95
Kim, John	07/25/60	03/04/94	04/18/94	02/13/95
Kwon, Ho O.	10/03/44	03/04/94	03/10/94	02/13/95
Spear, Chun Y.	10/10/54	03/04/94	03/11/94	02/13/95
Song, Won H.	03/03/62	03/04/94		02/13/95
Park, Sang Y.	08/30/39	03/04/94	03/10/94	02/13/95
Park, Mi J.	09/25/47	03/04/94	03/10/94	02/13/95
Park, Jong S.	01/04/31	03/08/94	03/14/94	02/13/95
Paik, Jung Sook L.	12/20/46	03/12/94	03/21/94	02/13/95
Lee, Helen K.	09/21/50	03/17/94	03/31/94	02/13/95
Pak, Christine C.	11/21/61	04/12/94	04/19/94	02/13/95
Kim, Charles C.	03/02/38	04/16/94	10/07/94	02/13/95
Yoo, Dong S.	01/15/50	04/26/94	05/02/94	02/13/95
Lee, Myung Ja C.	11/29/42	04/26/94	05/09/94	02/13/95
Lee, Jong G.	06/02/41	04/26/94	05/10/94	02/13/95
Ko, Young C.	01/05/48	04/26/94	05/09/94	02/13/95
Chun, Soon O.	05/20/39	04/27/94	05/23/94	02/13/95
Lee, Ik J.	02/08/60	04/28/94	07/08/94	02/13/95
Chong, Kil T.	07/24/60	05/06/94	07/28/94	02/13/95
Oh, Yon H.	09/20/46	05/06/94	06/03/94	02/13/95
Jamison, Sun Ye K.	04/06/49	05/19/94	05/26/94	02/13/95
Seong, Eun J.	03/01/60	05/19/94	05/24/94	02/13/95
Shon, Cynthia H.	02/04/63	05/19/94	06/24/94	02/13/95
Seong, Chong H.	08/27/54	05/19/94	05/24/94	02/13/95
Kim, Sam M.	12/09/40	05/24/94	06/17/94	02/13/95

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NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Lee, Kyong J.	03/16/52	05/24/94	07/28/94	02/13/95
Rha, Myung K.	01/01/44	05/24/94	06/09/94	02/13/95
Kang, Chung G.	12/12/62	05/24/94	07/12/94	02/13/95
Cho, Chang H.	05/17/61	05/24/94	08/02/94	02/13/95
Chang, John H.	03/31/71	06/01/94	06/30/94	02/13/95
Pak, In S.	10/29/60	06/02/94	06/14/94	02/13/95
Kim, Sang H.	10/04/60	06/02/94	06/17/94	02/13/95
An, Duck W.	02/19/45	06/02/94	07/11/94	02/13/95
Kang, Judy	10/20/44	06/02/94	06/14/94	02/13/95
Park, Jeehyun	05/31/73	06/04/94	08/01/94	02/13/95
Woo, Heeju F.	03/30/71	06/04/94	07/08/94	02/13/95
Choo, Ju H.	05/29/71	06/04/94	06/17/94	02/13/95
Lee, Hwaji Y.	02/05/44	06/30/94	09/23/94	02/13/95
Kim, Daniel H.	01/05/55	08/08/94	09/12/94	02/13/95
Yoo, Sung E.	01/18/50	08/09/94	11/23/94	02/13/95
Kim, Pter P.	04/05/42	09/08/94	09/16/94	02/13/95
Arnold, Myong H.	03/15/50	09/08/94	09/12/94	02/13/95
Rivera, Patricia E.	08/23/62	01/11/95	01/11/95	02/14/95
Szypula, Emma	08/06/24	01/12/95	01/12/95	02/14/95
De Santo, Renata	03/16/28	01/18/95	01/18/95	02/14/95
Koslic, Malinda L.	10/08/73	01/25/95	01/25/95	02/14/95
Tharaldsen, Jervid P.	07/08/47	09/14/94	09/14/94	02/15/95
Majorki, Millian	02/04/20	11/24/94	01/18/95	02/15/95
Schlosshan, Bodo Dieter H.	05/22/29	01/10/95	01/10/95	02/15/95
Ebner, Gail Z.	12/01/55	01/24/95	01/24/95	02/15/95
Coble, Tammt L.	06/24/73	01/24/95	01/24/95	02/15/95
Cagnard, Lars C.	02/10/75	01/30/95	01/30/95	02/15/95

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NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Gambill, Robert A.	03/31/55	02/01/95	02/01/95	02/15/95
Lindholm, Joan	06/04/41	02/09/95	02/09/95	02/15/95
Kim, Chin	05/05/64	09/06/94	09/16/94	02/23/95
Samuelson, Gudrun A.		02/10/95	02/10/95	02/23/95
Chandler, David L.	08/28/23	03/22/66	12/03/94	02/24/95
Rastall, Richard J.	05/02/50	12/10/93	12/10/93	02/24/95
Dart, Kenneth B.	04/21/55	12/10/93	12/10/93	02/24/95
Collette, Mary C.	12/13/25	07/14/94	12/14/94	02/24/95
Creaturo, Carol J.	11/29/36	12/01/94	12/31/94	02/24/95
Blake, Victor H.	10/19/35			02/27/95
Ziegler, Tor H.	05/12/41	02/09/95	02/09/95	03/03/95
La Pene, Hitoshi	12/07/71	12/16/93	12/16/93	03/06/95
Bagger, Karen M.	02/06/39	09/27/94	09/27/94	03/06/95
Harris, Haruko	03/15/35	10/17/94	12/01/94	03/06/95
Nakanishi, Tami	04/27/01	12/08/94	12/08/94	03/06/95
Heaslip, Anne E.	08/18/69	01/28/95	01/28/95	03/06/95
Nordin, Britt-Inger	02/23/56	01/31/95	01/31/95	03/06/95
Cho, Jae B.	04/26/60	09/15/94	01/24/95	03/07/95
Chang, Sang Y.	12/12/55	12/05/94	02/06/95	03/07/95
Chang, Paul	03/05/56	12/05/94	02/08/95	03/07/95
Kim, Byong S.	09/26/62	12/16/94	01/16/95	03/07/95
Ong, Florence Y.	01/26/73	12/29/94	12/29/94	03/07/95
Kim, Sunho	03/18/56	12/30/94	01/24/95	03/07/95
King, Gary R.	12/27/58	12/30/94	12/30/94	03/07/95
King, Jacqueline A.	03/28/54	12/30/94	12/30/94	03/07/95
Kim, James S.	01/01/56	01/19/95	02/09/95	03/07/95
Kim, Mi H.	03/10/56	01/19/95	02/09/95	03/07/95

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NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Dutt, Mohan	12/22/42	01/24/95	01/24/95	03/07/95
Chin, Peter H.	12/12/75	02/06/95	02/06/95	03/07/95
Kim, Susan J.	06/22/72	02/07/95	02/07/95	03/07/95
Kang, Joseph K.	01/22/41	02/08/95	02/14/95	03/07/95
Han, Grace H.	06/29/69	12/30/93	12/30/93	03/08/95
Kim, Jenny	10/15/75	01/13/94	01/13/94	03/08/95
Kim, Yea S.	06/09/47	01/14/94	01/14/94	03/08/95
Kim, Gerald J.	11/22/75	01/18/94	01/18/94	03/08/95
Kwon, Myra S.	12/30/70	01/25/94	01/25/94	03/08/95
Hyun, Yang H.	12/06/56	04/13/94	04/18/94	03/08/95
Andrews, Peter N.	05/12/38	05/10/94	05/10/94	03/08/95
Kim, Young G.	09/11/28	05/17/94	05/17/94	03/08/95
Kim, Edward R.	11/15/72	07/28/94	07/28/94	03/08/95
Chia, Lawrence P.	11/08/72	10/13/94	10/13/94	03/08/95
Higgins, John W.	09/26/52	02/21/95	02/21/95	03/08/95
Roengpithya, Viphandh	06/20/38	12/14/94	12/14/94	03/10/95
Montague, Montgomery	08/10/41			03/14/95
Wolson, Young-Mi K.	10/11/56	07/20/94	08/11/94	03/14/95
Haugland, Magne	04/27/55	02/15/95	02/15/95	03/22/95
Golmohammadi, Haleh		02/23/95	02/23/95	03/22/95
Ekbatani, John	01/21/30	03/02/95	03/02/95	03/22/95
Weiss, Lillian	09/08/13	03/06/95	03/06/95	03/22/95
Enoch, Lorraine R.	01/28/52			03/24/95
Bogdanovich, Joseph	05/09/12		02/14/95	03/24/95
Stormont, Denys J.	01/24/30	02/21/95	02/21/95	03/24/95
Wilson, James D.	04/25/37	12/30/94	12/30/94	03/27/95
Beltran, Paul	02/10/58	10/10/94		03/29/95

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NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Atkinson, James L.	08/10/28	02/06/66		03/31/95
Dunalp, Dorothy E.	04/21/40	06/13/94		03/31/95
Jacobs, Clyde L.	04/20/28	09/14/94		03/31/95
Jacobs, Patricia N.	03/08/34	09/14/94		03/31/95
Foxley, Alejandro T.	06/10/64	12/29/94	12/29/94	03/31/95
Townshend, Elizabeth M.	02/27/10	02/16/95		03/31/95
Acteson, Marilyn M.	03/12/31	03/03/95	03/03/95	03/31/95
Enright, James E.	06/21/32	03/03/95		03/31/95
Pasley, Gary R.	06/28/47	08/16/94	08/16/95	04/05/95
Dennis, Jeffrey H.	06/26/41	12/30/94	12/30/94	04/05/95
Kim, Jinho	09/28/59	05/24/93	02/14/95	04/06/95
Phillips, William W.	03/03/47	12/07/94	12/07/94	04/06/95
Landes, Ivan N.	11/14/50	02/02/95	02/02/95	04/06/95
You, Jong K.	03/02/44	12/13/94		04/07/95
Saliba, Eric G.	10/11/72	09/12/94	11/15/94	04/10/95
Saliba, John F.	03/01/71	09/13/94	11/23/94	04/10/95
Urquizu, Yolanda M.	02/10/27	09/29/94	09/29/94	04/10/95
Nielsen, Maria D.	07/13/29	12/23/94	12/23/94	04/10/95
Mifsud, Carmen		01/19/95	02/06/95	04/10/95
Portelli, Joseph B.	07/25/76	03/07/95	03/07/95	04/10/95
Attard, Jennifer A.	04/13/76	03/08/95	03/08/95	04/10/95
Manello, Therese	02/01/13	03/14/95	03/14/95	04/11/95
Jasinski, Harriet T.	12/07/34	03/15/95	03/15/95	04/11/95
Matley, Nicolasina J.	01/07/21	03/16/95	03/16/95	04/11/95
Herman, Leroy T.	07/30/32	03/23/95	03/23/95	04/11/95
Watt, William S.	07/26/55	03/27/95	03/27/95	04/11/95
Laurie, Arlie J.	12/10/23	03/28/95	03/28/95	04/11/95

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NAME	BIRTH DATE	LOSS DATE	APPLICATION DATE	CLN ISSUE DATE
Downes, Shirley H.	05/21/28	03/31/95	03/31/95	04/11/95
Banks, Samuel A.	08/09/54	12/21/94	12/21/94	04/14/95
Wood, James F.	10/11/40	12/15/93		04/17/95
Liu, Chin-Hsin J.	08/30/49	04/11/95		04/21/95
Snisky, Michele R	09/16/73	04/10/95	04/10/95	04/24/95
Wu, Jin	04/09/34	04/13/95		04/25/95